

CCOAMINI SUPREME COURT - STATE OF NEW YORK DATE: 04/16/2008
INDEX NO: 402996 2007 E NEW YORK COUNTY CLERK TIME: 11:35:55
PURCHASE: 05182007 CIVIL INDEX MINUTE BOOK INQUIRY

PLAINTIFF NAME: OUFRESNE LORI DEFENDANT NAME: PFIZER INC
ATTORNEY: UNKNOWN ATTORNEY: UNKNOWN

SEQ	DATE	MINUTES
0001	05182007	TRANSFER PAPERS FROM BROOME COUNTY
0001	03062008	STIPULATION OF DISMISSAL
0001	04092008	ORDER IAS PART 54 SEQ 001 WITHDRAWN

COUNTY CLERK, NEW YORK COUNTY

Application for INDEX NUMBER pursuant to Section 8018,
C.P.L.R.

FEE \$210.00

INDEX NUMBER

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TITLE OF ACTION OR PROCEEDING

CHECK ONE

<input type="checkbox"/> COMMERCIAL ACTION	<input type="checkbox"/> NOT COMMERCIAL ACTION
<input type="checkbox"/> CONSUMER CREDIT TRANSACTION	<input type="checkbox"/> NOT CONSUMER CREDIT TRANSACTION
<input type="checkbox"/> THIRD PARTY ACTION	<input checked="" type="checkbox"/> NOT THIRD PARTY ACTION

PLAINTIFF(S)

MORI DUFRESNE, Individually and as personal representative for, FRANK SPENCER, deceased,

THIRD PARTY ACTION
INDEX NO.

DEFENDANT(S)

PFIZER INC., PHARMACIA CORPORATION, a wholly-owned subsidiary of PFIZER C., and PHARMACIA & UPJOHN COMPANY, a wholly-owned subsidiary of PHARMACIA CORPORATION and MERCK, INC.

07402996

Name and address of
Attorney for Plaintiff
or Petitioner.
Telephone No.

Name and address of
Attorney for Defendant
or Respondent.
Telephone No.

*Transferred Papers
from Broome County*

A. Nature and object of action or
Nature of special proceeding

B. Application for Index Number filed by: Plaintiff ☐ Defendant ☐

C. Was a previous Third Party Action filed Yes ☐ No ☐
Date filed

CRD290-11
Inquiry

Broome County Clerk
Document-Notes

4/24/2007
3:35:13

Set Category: T Title Company
Recorded For: 271 RONALD BENJAMIN ESQ.
Doc Type 1...: C01 Civil Action

Book/Page:
Document No.: 200600039656
Set: 200600039656 200600039656
Rcd Dt/Tm: 10/02/2006 2:09:03
Receipt Number: 483402



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Seq

10 PLTF ATTY LAW OFFICES OF RONALD R BENJAMIN
20 DEF ATTY UNKNOWN
30 10/02/06 SUMMONS* COMPLAINT
40 11/14/06 AMENDED ANSWER OF DEF MERCK & CO INC, AFFD-MAIL
50 03/21/07 RJJ(LEBOUS) & AFFIRMATION, RIDER SHEET, AFFD-MAIL
60 04/11/07 STIPULATION AND ORDER CHANGING VENUE
70 04/16/07 NOTICE OF ENTRY, STIPULATION AND ORDER CHANGING VENUE, AFFD
80 OF MAIL

Bottom

F2=Accept F3=Exit F7=Page Up F8=Page Down *
F10=Go To F12=Cancel F13=Rcd Only F19=Cashier F23=Delete
Already at the bottom...

FILED

MAY 18 2007

**NEW YORK
COUNTY CLERK'S OFFICE**

Pages from Broome county
transferred and filed
under NYS index
2002-996/07

COUNTY CLERK, BROOME COUNTY
Application for INDEX NUMBER
pursuant to Section 1555 (a) 2 C.P.A.

FEE \$210.00

STATE OF NEW YORK
SUPREME COURT, BROOME COUNTY

Lori DuFresne, Individually and
as personal representative for,
Frank Spencer, deceased,

Plaintiff,

-vs-

Pfizer, Inc., Pharmacia Corporation,
a wholly-owned subsidiary of Pfizer,
Inc., and Pharmacia & Upjohn Company,
a wholly owned subsidiary of Pharmacia
Corporation, and Merck, Inc.

Defendants.

INDEX NUMBER

~~00206002125~~

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Ek

Name and address of Attorney of Plaintiff or Petitioner
LAW OFFICES OF RONALD R. BENJAMIN
126 Riverside Drive
P.O. Box 607
Binghamton, New York 13902-0607

Name and address of Attorney for Defendant or Respondent
UNKNOWN

Indexed and Entered

FILED

OCT 02 2006

BROOME COUNTY
CLERK'S OFFICE

2/02996/07

BROOME COUNTY CLERK

Return To:

RONALD BENJAMIN ESQ.
126 Riverside Drive
Binghamton, NY 13905

DUFRESNE LORI-IND&REPRESENTATIVE

Index :
Book : 00000 Page: 0000
Pages : 0002
Instrument : Civil Action
Date : 10/02/2006
Time : 2:09:03
Control# : 200600039656
Fil#1 : ~~02-0005-002195~~
2/02996/07
Employee ID: GMG30953

CRT1 - COURT INDEX # \$	165.00
RC1 - RECORDING \$	26.00
RMCA-Records Mgmt Ci \$	4.75
STCA-Record Mgmt Civ \$	14.25

Total \$ 210.00

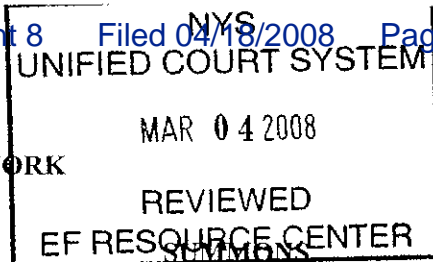
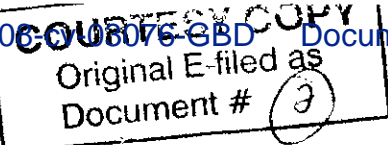
STATE OF NEW YORK
BROOME COUNTY CLERK

WARNING-THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 316-A(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH.

RICHARD R BLYTHE

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Ver. _____
Bk. _____





FILED

OCT 02 2006

BROOME COUNTY
CLERK'S OFFICESUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BROOMELORI DUFRESNE, Individually and as personal
representative for, FRANK SPENCER, deceased,

Plaintiffs,

-against-

PFIZER, INC., PHARMACIA CORPORATION, a
wholly-owned subsidiary of PFIZER, INC., and
PHARMACIA & UPJOHN COMPANY, a wholly-
owned subsidiary of PHARMACIA CORPORATION,
and MERCK & CO., INC.,

Defendants.

Plaintiff designates **Broome County** as
place of trial based on defendants' principal
place of businessIndex No.: ~~2006-000113~~

Date Filed:

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TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's undersigned attorney within twenty (20) days after service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: October 2, 2006
Binghamton, New York

Plaintiffs' residence is:
295 Hillside Terrace, Endwell, New York 13760

Defendants' Addresses:

Pfizer Inc., 245 E. 42nd Street, New York, NY 10017-5755
Pharmacia Corporation, 100 Route 203, North Peapack, NJ 07977
Pharmacia & Upjohn Company, Tax Dept., 88-106, 7000 Portage Road, Kalamazoo, MI 49001
Merck & Co., Inc., One Merck Drive, P.O. Box 100 WS3AB-05, Whitehouse Station, NJ 08889-0100

FILED
MAY 18 2007
NEW YORK
COUNTY CLERK'S OFFICE

Ronald R. Benjamin, Esq.

LAW OFFICES OF RONALD R. BENJAMIN

Attorney for Plaintiff

126 Riverside Drive

P.O. Box 607

Binghamton, New York 13902-0607

(607) 772-1442

STATE OF NEW YORK: SUPREME COURT
COUNTY OF BROOME

FILED

OCT 02 2006

BROOME COUNTY
CLERK'S OFFICE

LORI DUFRESNE, Individually and as personal
representative for, FRANK SPENCER, deceased,

Plaintiffs,

COMPLAINT

2/02996/07

Index No. ~~0181101235~~

-VS-

Date Filed:

PFIZER, INC., PHARMACIA CORPORATION, a wholly-own
subsidiary of PFIZER, INC., and PHARMACIA & UPJOHN
COMPANY, a wholly owned subsidiary of PHARMACIA
CORPORATION, and MERCK, INC.

Defendants.

FILED

MAY 18 2007

NEW YORK
COUNTY CLERK'S OFFICE

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Plaintiffs, by and through counsel, the Law Office of Ronald R. Benjamin, allege upon
information and belief as follows:

1. Plaintiff Lori DuFresne at all times relevant herein a resident of the State of New York, residing at 295 Hillside Terrace, Endwell, NY 13760.
2. Plaintiff Lori DuFresne is the personal representative of the estate of Frank C. Spencer, deceased, having been issued Limited Letters of Administration by the Broome County Surrogate's Court on October 2, 2006.
3. Upon information and belief, defendant PFIZER INC., is a Delaware corporation with its principal place of business located at 235 East 42nd Street, New York, New York, and is authorized to do and doing business in the State of New York with the county of its principal office registered as New York County.
4. Upon information and belief, defendant PHARMACIA & UPJOHN COMPANY is a wholly-owned subsidiary of PHARMACIA CORPORATION, and at times relevant to this complaint,

each was a foreign corporation incorporated in the State of Delaware, and authorized to do business in the State of New York, registered in or with its principal office located in New York County.

5. Upon information and belief, as the result of a corporate merger between Pfizer, Inc., and Pharmacia Corporation in or about April 2004, Pharmacia Corporation which is a wholly-owned subsidiary of Pfizer, Inc., and, as a result thereof, Pfizer, Inc., is legally responsible for all obligations, debts and liabilities of Pharmacia Corporation and Pharmacia & Upjohn Company, and is the successor in interest and real party to Pharmacia Corporation and Pharmacia & Upjohn Company (hereafter collectively referred to as Pfizer or defendants).

6. Upon information and belief, at all times relevant hereto defendant MERCK & CO. INC. (hereafter "Merck"), was and is a foreign corporation by virtue of being incorporated in New Jersey, and has its principal place of business at One Merck Drive, P.O. Box 100, WS3AB-05 Whitehouse Station, New Jersey 08889-01000, and is authorized to do business in the State of New York, with its registered principal office located at 111 Eighth Avenue, New York, NY 10011, in the County of New York.

7. That from approximately May 2004 until on or about September 2004, plaintiff's decedent ingested **VIOXX**, at the direct of his physicians and in accordance with the manufacturer's instructions.

8. That from approximately September 2004 until on or about October 2004, plaintiff's decedent ingested **CELEBREX**, at the direction of his physicians and in accordance with the manufacturer's instructions.

9. As a direct and proximate result of the conduct of the defendants, the plaintiff's decedent sustained cardiac failure which, upon information and belief, caused his untimely death on or about October 2, 2004.

10. By reason of the foregoing, the decedent sustained great pain and suffering, and sustained great anxiety and fear of additional adverse medical consequences, and was caused to die prematurely.

11. By reason of his injuries, the plaintiff has incurred or may be obligated to pay monies for medical expenses, funeral arrangements and expenses, and estate expenses.

12. The injuries sustained by the decedent as aforesaid and the damages resulting therefrom were caused solely by the defendants' defective products without and fault on the part of the decedent contributing hereto.

13. Upon information and belief, the defendants used a wide range of marketing methods to promote the aforesaid products including, but not limited to, sponsoring medical journals to promote the alleged benefits of its products, using sales representatives to call to on physicians throughout the country to encourage them to prescribe defendants' products, sponsoring continued medical education programs for the express purpose of promoting its products, hiring experts in the field to speak to physicians for purposes of promoting their products, by direct advertisements to consumers and end-users of their product, and by utilizing the media to promote the alleged benefits of their products.

14. Upon information and belief, each defendant engaged in extensive advertising and promotional activity which indicated its drug was efficacious for treating and that it was safe to use, and published a description thereof in the Physician's Desk Reference for use by doctors in determining whether to prescribe said drug to patients, including plaintiff's decedent.

15. Upon information and belief, based on each defendant's promotional activity with respect to the aforesaid product, plaintiff's decedent was prescribed the drug based on the belief the same was safe to use and was unlikely to subject plaintiff's decedent to serious side effects as a result of use of the products.

16. In reliance on the same, plaintiff's decedent ingested said drugs and continued ingesting the drugs for a period of time as instructed by the prescribing physicians.

17. At all times herein mentioned the defendants knew their products did not have scientifically proven benefits and that the risks included cardiovascular events including, but not limited

to, heart attack, stroke, thromboembolism, as well as other illnesses, which is known by either to medical community or end users would have resulted in consumers, including the plaintiff's decedent using alternative medications.

18. Upon information and belief, had the defendants carried out proper testing on their product they would have realized that the risks of using their products included cardiovascular events including, but not limited to, heart attack, stroke, thromboembolism, and that the risks far outweighed any alleged benefits from their products.

19. Plaintiff alleges that the limitations on liability set forth in CPLR § 1601 do not apply under the exemptions set forth in CPLR §§ 1602(5), 1602(7) and 1602(11).

AS AND FOR A FIRST CAUSE OF ACTION
(SURVIVAL ACTION FOR
NEGLIGENCE AND GROSS NEGLIGENCE)

20. Plaintiff realleges and incorporates herein as if fully set forth herein the allegations in the preceding paragraphs 1 thru 19 of this complaint.

21. At all times herein mentioned, each defendant, itself or by use of others, did manufacture, create, design, test, label, package, distribute, supply, market, sell, advertise, and otherwise distribute in interstate commerce said product.

22. The defendants knew or should have known with the exercise of reasonable care that the product is an unreasonably dangerous product and nevertheless manufactured and placed said product into the stream of commerce.

23. Prior to the time the plaintiff's decedent ingested the product, the defendants knew or should have known that a significant portion of the users of the product would be subject to a significant risk and increased risk of serious side effects, including cardiovascular disease and stroke.

24. Upon information and belief, the defendant manufacturers failed to carry out adequate

investigation including, but not limited to, failing to adequately test the product.

25. Each defendant was further grossly negligent and evinced a reckless disregard for the safety of persons who would be using said product by downplaying, minimizing, and otherwise failing to warn the medical profession, the public in general and the plaintiff's decedent in particular about the serious and deadly side effects of its product, while at the same time promoting the drug on the basis of minor alleged benefits and unsubstantiated or false claims as to efficacy for pain management.

26. As a direct and proximate result of the negligence of the defendants, plaintiff's decedent was harmed and sustained cardiac failure and cardiomyopathy due to ingesting the product over a period of time.

27. By reason of the foregoing, plaintiff sustained great pain and suffering for a lengthy period of time, and sustained great anxiety and fear of additional adverse medical consequences, ultimately dying prematurely.

28. Upon information and belief, as a result of the conduct of the defendants, plaintiff's decedent sustained injuries as a result of complications and causes stemming from the ingestion of the aforesaid products.

29. By reason of plaintiff's decedent injuries, plaintiff has incurred or may be obligated to pay monies for medical expenses.

30. The injuries plaintiff's decedent sustained as aforesaid and the damage resulting therefrom were caused solely by the defendants' defective products without any fault on the part of plaintiffs contributing thereto.

31. As a result of the foregoing, plaintiff's decedent is entitled to compensatory damages from defendants, and are entitled to exemplary damages.

AS AND FOR A SECOND CAUSE OF ACTION
(SURVIVAL ACTION FOR STRICT LIABILITY)

32. Plaintiff incorporates by reference and realleges the preceding paragraphs 1 thru 31 as if fully set forth herein and further allege the following.

33. At all times herein mentioned product was dangerous and defective, in that any benefit from said product was outweighed by the serious and deadly side effects of said drug.

34. The defendants placed said products into the stream of commerce with reckless disregard for the public safety in that it did not carry out adequate testing, did not timely or adequately continue to test and monitor the safety of the drugs, or take other reasonable steps to assure the product was efficacious for the purpose for which they were intended without subjecting the user to significant and harmful side effects as aforesaid.

35. The defendants are strictly liable for the injuries plaintiff sustained as a result of ingesting the products as aforesaid.

36. As a result of reckless disregard for the public welfare and welfare of plaintiff in particular, said plaintiff is entitled to exemplary damages from each defendant in addition to compensatory damages sustained as a result of defendants' conduct.

AS AND FOR A THIRD CAUSE OF ACTION
(SURVIVAL ACTION FOR MISREPRESENTATION AND FAILURE TO WARN)

37. Plaintiff incorporates by reference and realleges the preceding paragraphs 1 thru 36 as if fully set forth herein and further allege the following.

38. Beginning prior to the time the plaintiff herein ingested the drugs complained of, the defendants engaged in a strategy involving aggressively marketing and selling the aforesaid products by falsely misleading potential users as to the safety of the drugs and by failing to protect users from serious dangers which defendants knew or should have known to result from use of said product.

39. By use of affirmative misrepresentations and omissions, the defendants engaged in promotional or advertising programs that falsely and fraudulently sought to create the image and impression that the use of the aforesaid drugs were safe or had minimal risks to the public and the plaintiff in particular.

40. Upon information and belief, defendants understated downplayed or withheld information concerning health hazards and risks associated with the drugs, as well as the lack of adequate testing and monitoring for safety.

41. The defendants failed to provide adequate warnings and/or information concerning the harms or potential harms of and dangers of the use of said product to the public for whom the drugs were not expressly contraindicated, and diluted any warnings by representing that adverse events were not significant for persons likely to be the users of said drugs.

42. As a direct and proximate result of the aforesaid failure by the defendant to provide appropriate warnings and/or instructions, plaintiff sustained the harm complained of herein.

43. Upon information and belief, at the times relevant to this complaint, defendants were in possession of information demonstrating serious side effects evidencing the increased risk the drug posed to patients, or clearly should have been in possession of such information yet continued to market the product by providing false and misleading information with regard to safety as aforesaid.

44. That despite the same, and despite the fact that there was existing evidence said drug was in fact dangerous, the defendants downplayed the health hazards and risks associated with the product and in fact deceived the medical community and public at large including all potential users of the products by promoting the same as safe and effective.

45. Upon information and belief, defendants placed profit concerns over and above the safety of the public and as a result of such reckless conduct, plaintiff is entitled to exemplary damages from the defendants in addition to compensatory damages sustained as a result of each of the defendants'

conduct.

46. Plaintiff is entitled to exemplary damages from the defendants as the failure to warn was reckless and without regard to the public safety and welfare in that they misled both the medical community and the public at large including the plaintiff herein by misleading them about the safety of the products and downplayed or ignored serious side effects despite available information demonstrating these products were likely to cause serious and sometimes fatal side effects to the users.

47. As a result of reckless disregard for the public welfare and welfare of plaintiff in particular said plaintiff is entitled to exemplary damages from the defendants in addition to compensatory damages sustained as a result of each of the defendants' conduct.

AS AND FOR A FOURTH AND SEPARATE CAUSE OF ACTION
(SURVIVAL ACTION FOR BREACH OF EXPRESS AND IMPLIED WARRANTIES)

48. Plaintiff incorporates by reference and realleges the preceding paragraphs 1 thru 47 as if fully set forth herein and further alleges the following.

49. That the manufacturing defendants expressly warranted that the products were safe when used by patients for whom they were not otherwise contraindicated.

50. That the manufacturing defendants breached such warranty in that said drugs are not safe for the purpose for which they were intended.

51. As a direct and proximate result of the aforesaid breach plaintiff sustained the injuries complained of herein and will continue to suffer harm in the future as set forth herein.

AS AND FOR A FIFTH CAUSE OF ACTION
(WRONGFUL DEATH)

57. Plaintiff realleges and incorporates herein by reference the foregoing paragraphs 1 thru 56 as if fully set forth herein.

58. Plaintiff's decedent was survived by his mother, Theresa Spencer, a second sister, Lynn Marie Rose and brother, Don Mark Spencer.

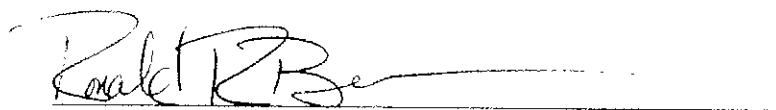
59. As a result of the injuries and premature death of plaintiff's decedent, plaintiff and the decedent's estate incurred expenses for his care and treatment and plaintiff, the decedent's mother, sister and brother, have been deprived of the support and services of the decedent, and their comfort, happiness and companionship have been significantly impaired by reason of the wrongful death of plaintiff's decedent

60. As a result of the foregoing, plaintiff, individually and as heir and representative of the estate of the decedent, have been damaged in a sum to be determined at trial.

61. By reason of the death of plaintiff's decedent, plaintiff incurred or may be obligated to pay monies for decedent's medical expenses and funeral expenses and burial.

WHEREFORE, plaintiff respectfully requests this Honorable Court to enter judgment against the defendants, jointly and severally, in compensatory and exemplary damages in an amount to be determined by trial of this action, and that plaintiff be awarded the costs and disbursements of this action, along with such other and further relief as is just and proper.

Dated: October 2, 2006
Binghamton, New York



Ronald R. Benjamin

LAW OFFICE OF RONALD R. BENJAMIN

Attorneys for Plaintiffs

126 Riverside Drive, P.O. Box 607

Binghamton, New York 13902-0607

607/772-1442

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BROOME

FILED

NOV 14 2006

BROOME COUNTY
CLERK'S OFFICE

LORI DUFRESNE, Individually and as personal
representative for, FRANK SPENCER, deceased,

Plaintiff,

-against-

PFIZER, INC., PHARMACIA CORPORATION,
a wholly-owned subsidiary of PFIZER, INC., and
PHARMACIA & UPJOHN COMPANY, a
wholly-owned subsidiary of PHARMACIA
CORPORATION, and MERCK & CO., INC.

Defendants.

No.: ~~28~~ 2007131

2/02996/07

AMENDED ANSWER OF
DEFENDANT MERCK & CO.,
INC.

FILED
MAY 18 2007

NEW YORK
COUNTY CLERK'S OFFICE

Comp. LS

Var. _____

Bk. _____

Defendant Merck & Co., Inc. ("Merck"), its undersigned attorneys, answers
the Complaint ("Complaint") herein as follows:

1. Upon information and belief, admits the allegations contained in paragraph 1
of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth or
falsity of the allegations contained in paragraph 2 of the Complaint.
3. The allegations contained in paragraph 3 of the Complaint are not directed
towards Merck and therefore no responsive pleading is required. Should a response be
deemed required, Merck denies knowledge or information sufficient to form a belief as to
the truth or falsity of the allegations contained in said paragraph except admits, upon
information and belief, that Pfizer, Inc. ("Pfizer") is a Delaware Corporation with its
principal place of business in New York.

E-Filed Document
5

4. The allegations contained in paragraph 4 of the Complaint are not directed towards Merck and therefore no responsive pleading is required. Should a response be deemed required, Merck denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in said paragraph.

5. The allegations contained in paragraph 5 of the Complaint are not directed towards Merck and therefore no responsive pleading is required. Should a response be deemed required, Merck denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in said paragraph.

6. Denies each and every allegation contained in paragraph 6 of the Complaint except admits that Merck is a New Jersey Corporation with its principal place of business at One Merck Drive, Whitehouse Station, New Jersey.

7. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 7 of the Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 8 of the Complaint.

9. Denies each and every allegation contained in paragraph 9 of the Complaint.

10. Denies each and every allegation contained in paragraph 10 of the Complaint.

11. Denies each and every allegation contained in paragraph 11 of the Complaint.

12. Denies each and every allegation contained in paragraph 12 of the Complaint.

13. Denies each and every allegation contained in paragraph 13 of the Complaint except admit that Merck marketed the prescription medicine Vioxx® and, upon information and belief, that Pfizer marketed Celebrex®.

14. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations not directed toward Merck in paragraph 14 of the Complaint. With respect to the allegations directed at Merck, Merck denies each and every allegation contained in paragraph 14 of the Complaint, except admits that Merck marketed the prescription medication Vioxx, which was approved by the FDA as safe and effective for certain indicated uses in a manner consistent with the information contained in the FDA-approved prescribing information. Merck further avers that it provides to the Physicians' Desk Reference a copy for publication of the FDA-approved prescribing information for Vioxx in effect at the time and respectfully refers the Court to the Physicians' Desk Reference for the actual language and full text of said prescribing information.

15. Denies each and every allegation contained in paragraph 15 of the Complaint.

16. Denies each and every allegation contained in paragraph 16 of the Complaint.

17. Denies each and every allegation contained in paragraph 17 of the Complaint.

18. Denies each and every allegation contained in paragraph 18 of the Complaint.

19. The allegations contained in paragraph 19 of the Complaint are legal conclusions as to which no responsive pleading is required. Should a response be deemed required, Merck denies each and every allegation contained in said paragraph.

**RESPONSE TO "FIRST CAUSE OF ACTION
(SURVIVAL ACTION FOR NEGLIGENCE AND GROSS NEGLIGENCE)"**

20. With respect to the allegations contained in paragraph 20 of the Complaint, Merck repeats and realleges each and every admission, denial, averment, and statement contained in paragraphs 1 through 19 of this Answer with the same force and effect as though set forth here in full.

21. Denies each and every allegation contained in paragraph 21 of the Complaint, except admits that Merck manufactured, marketed and distributed the prescription medicine Vioxx and that, upon information and belief, Pfizer manufactured and marketed Celebrex®.

22. Denies each and every allegation contained in paragraph 22 of the Complaint.

23. Denies each and every allegation contained in paragraph 23 of the Complaint.

24. Denies each and every allegation contained in paragraph 24 of the Complaint.

25. Denies each and every allegation contained in paragraph 25 of the Complaint.

26. Denies each and every allegation contained in paragraph 26 of the Complaint.

27. Denies each and every allegation contained in paragraph 27 of the Complaint.

28. Denies each and every allegation contained in paragraph 28 of the Complaint.

29. Denies each and every allegation contained in paragraph 29 of the Complaint.

30. Denies each and every allegation contained in paragraph 30 of the Complaint.

31. Denies each and every allegation contained in paragraph 31 of the Complaint.

**RESPONSE TO “SECOND CAUSE OF ACTION
(SURVIVAL ACTION FOR STRICT LIABILITY)”**

32. With respect to the allegations contained in paragraph 32 of the Complaint, Merck repeats and realleges each and every admission, denial, averment, and statement contained in paragraphs 1 through 31 of this Answer with the same force and effect as though set forth here in full.

33. Denies each and every allegation contained in paragraph 33 of the Complaint.

34. Denies each and every allegation contained in paragraph 34 of the Complaint.

35. Denies each and every allegation contained in paragraph 35 of the Complaint.

36. Denies each and every allegation contained in paragraph 36 of the Complaint.

**RESPONSE TO “THIRD CAUSE OF ACTION
(SURVIVAL ACTION FOR
MISREPRESENTATION AND FAILURE TO WARN)”**

37. With respect to the allegations contained in paragraph 37 of the Complaint, Merck repeats and realleges each and every admission, denial, averment, and statement contained in paragraphs 1 through 36 of this Answer with the same force and effect as though set forth here in full.

38. Denies each and every allegation contained in paragraph 38 of the Complaint.

39. Denies each and every allegation contained in paragraph 39 of the Complaint.

40. Denies each and every allegation contained in paragraph 40 of the Complaint.

41. Denies each and every allegation contained in paragraph 41 of the Complaint.

42. Denies each and every allegation contained in paragraph 42 of the Complaint.

43. Denies each and every allegation contained in paragraph 43 of the Complaint.

44. Denies each and every allegation contained in paragraph 44 of the Complaint.

45. Denies each and every allegation contained in paragraph 45 of the Complaint.

46. Denies each and every allegation contained in paragraph 46 of the Complaint.

47. Denies each and every allegation contained in paragraph 47 of the Complaint.

**RESPONSE TO “FOURTH AND SEPARATE CAUSE OF ACTION
(SURVIVAL ACTION FOR
BREACH OF EXPRESS AND IMPLIED WARRANTIES)”**

48. With respect to the allegations contained in paragraph 48 of the Complaint, Merck repeats and realleges each and every admission, denial, averment, and statement contained in paragraphs 1 through 47 of this Answer with the same force and effect as though set forth here in full.

49. Denies each and every allegation contained in paragraph 49 of the Complaint.

50. Denies each and every allegation contained in paragraph 50 of the Complaint.

51. Denies each and every allegation contained in paragraph 51 of the Complaint.

**RESPONSE TO "FIFTH CAUSE OF ACTION
(WRONGFUL DEATH)"**

52. With respect to the allegations contained in paragraph 57 of the Complaint, Merck repeats and realleges each and every admission, denial, averment, and statement contained in paragraphs 1 through 51 of this Answer with the same force and effect as though set forth here in full.¹

53. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 58 of the Complaint except.

54. Denies each and every allegation contained in paragraph 59 of the Complaint.

55. Denies each and every allegation contained in paragraph 60 of the Complaint.

56. Denies each and every allegation contained in paragraph 61 of the Complaint.

**AS FOR A FIRST
DEFENSE, MERCK ALLEGES:**

57. The claims of Plaintiff may be time-barred, in whole or in part, under applicable statutes of limitations or statutes of repose, or are otherwise untimely.

**AS FOR A SECOND
DEFENSE, MERCK ALLEGES:**

58. The Complaint fails to state a claim upon which relief can be granted.

**AS FOR A THIRD
DEFENSE, MERCK ALLEGES:**

59. The claims of Plaintiff may be barred, in whole or in part, from recovery because Plaintiff or Plaintiff's decedent has made statements or taken actions that preclude Plaintiff from asserting claims or constitute a waiver of their claims.

1. Plaintiff's Complaint does not include paragraphs numbered "52" through "56". Merck answers all paragraphs contained in the Complaint.

**AS FOR A FOURTH
DEFENSE, MERCK ALLEGES:**

60. The claims of Plaintiff may be barred, in whole or in part, from recovery because of the res judicata effect of prior judgments.

**AS FOR A FIFTH
DEFENSE, MERCK ALLEGES:**

61. Each and every claim asserted or raised in the Complaint is barred by the doctrines of estoppel, waiver or statutory and regulatory compliance.

**AS FOR A SIXTH
DEFENSE, MERCK ALLEGES:**

62. If Plaintiff or Plaintiff's decedent has sustained injuries or losses as alleged in the Complaint, upon information and belief, such injuries or losses were caused in whole or in part through the operation of nature or other intervening cause or causes.

**AS FOR A SEVENTH
DEFENSE, MERCK ALLEGES:**

63. To the extent that Plaintiff asserts claims based on Merck's adherence to and compliance with applicable federal laws, regulations and rules, such claims are preempted by federal law under the Supremacy Clause of the United States Constitution.

**AS FOR AN EIGHTH
DEFENSE, MERCK ALLEGES:**

64. To the extent that Plaintiff asserts claims based upon an alleged failure by Merck to warn Plaintiff or Plaintiff's decedent directly of alleged dangers associated with the use of Vioxx, such claims are barred under the learned intermediary doctrine because Merck has discharged its duty to warn in its warning to the prescribing physician.

**AS FOR A NINTH
DEFENSE, MERCK ALLEGES:**

65. If Plaintiff or Plaintiff's decedent has sustained injuries or losses as alleged in the Complaint, such injuries or losses were only so sustained after Plaintiff or Plaintiff's decedent knowingly, voluntarily, and willfully assumed the risk of any injury as the result of the consumption of, administration of, or exposure to any drug or pharmaceutical preparation manufactured or distributed by Merck or other manufacturer.

**AS FOR A TENTH
DEFENSE, MERCK ALLEGES:**

66. If Plaintiff or Plaintiff's decedent has sustained injuries or losses as alleged in the Complaint, upon information and belief, such injuries and losses were caused by the actions of persons not having real or apparent authority to take said actions on behalf of Merck and over whom Merck had no control and for whom Merck may not be held accountable.

**AS FOR AN ELEVENTH
DEFENSE, MERCK ALLEGES:**

67. If Plaintiff or Plaintiff's decedent has sustained injuries or losses as alleged in the Complaint, upon information and belief, such injuries and losses were proximately caused by Plaintiff's decedent's misuse or abuse of Vioxx.

**AS FOR A TWELFTH
DEFENSE, MERCK ALLEGES:**

68. If Plaintiff or Plaintiff's decedent has sustained injuries or losses as alleged in the Complaint, such injuries or losses resulted from Plaintiff's decedent's pre-existing and unrelated medical, genetic and environmental conditions, diseases, or illnesses, subsequent medical conditions or natural courses of conditions for which this defendant is not responsible.

**AS FOR A THIRTEENTH
DEFENSE, MERCK ALLEGES:**

69. To the extent Plaintiff or Plaintiff's decedent has settled or will in the future settle with any person or entity with respect to the injuries asserted in the Complaint, Merck's liability, if any, should be reduced accordingly.

**AS FOR A FOURTEENTH
DEFENSE, MERCK ALLEGES:**

70. To the extent Plaintiff is seeking recovery for benefits entitled to be received or actually received from any other source for injuries alleged in the Complaint, such benefits are not recoverable in this action.

**AS FOR A FIFTEENTH
DEFENSE, MERCK ALLEGES:**

71. Plaintiff's claims of fraud and misrepresentation are barred by reason of Plaintiff's failure to allege the circumstances constituting fraud with particularity, as required by Sections 3013 and 3016(b) of the New York Civil Practice Law and Rules.

**AS FOR A SIXTEENTH
DEFENSE, MERCK ALLEGES:**

72. Plaintiff's claims are barred, in whole or in part, under the applicable state law because Vioxx was subject to and received pre-market approval by the Food and Drug Administration under 52 Stat. 1040, 21 U.S.C. § 301.

**AS FOR A SEVENTEENTH
DEFENSE, MERCK ALLEGES:**

73. Plaintiff's claims are barred in whole or in part by the First Amendment.

**AS FOR AN EIGHTEENTH
DEFENSE, MERCK ALLEGES:**

74. Plaintiff's claims are barred in whole or in part because the product at issue was made in accordance with the state of the art at the time it was manufactured.

**AS FOR A NINETEENTH
DEFENSE, MERCK ALLEGES:**

75. There is no practical or technically feasible alternative design that would have reduced the alleged risk without substantially impairing the reasonably anticipated and intended function of Vioxx.

**AS FOR A TWENTIETH
DEFENSE, MERCK ALLEGES:**

76. The claims of Plaintiff may be barred, in whole or in part, from recovery because, in this or other courts, they have brought actions and have received judgments on parts of some or all claims asserted herein.

**AS FOR A TWENTY-FIRST
DEFENSE, MERCK ALLEGES:**

77. The claims of Plaintiff may be barred, in whole or in part, from recovery, on the ground that the claims asserted herein have been submitted to arbitration, and a binding decision has been rendered.

**AS FOR A TWENTY-SECOND
DEFENSE, MERCK ALLEGES:**

78. The claims of Plaintiff may be barred, in whole or in part, from recovery by release as to their claims.

**AS FOR A TWENTY-THIRD
DEFENSE, MERCK ALLEGES:**

79. The claims of Plaintiff and the purported class members may be barred, in whole and in part, by the doctrine of laches.

**AS FOR A TWENTY-FOURTH
DEFENSE, MERCK ALLEGES:**

80. The claims of Plaintiff are barred, in whole or in part, by Plaintiff or Plaintiff's decedent's failure to mitigate damages.

**AS FOR A TWENTY-FIFTH
DEFENSE, MERCK ALLEGES:**

81. To the extent there were any risks associated with the use of the product which is the subject matter of this action that Merck knew or should have known and which gave rise to a duty to warn, Merck at all times discharged such duty through appropriate and adequate warnings in accordance with federal and governing state laws.

**AS FOR A TWENTY-SIXTH
DEFENSE, MERCK ALLEGES:**

82. The claims of Plaintiff may be barred, in whole or in part, from recovery, due to spoliation of evidence.

**AS FOR A TWENTY-SEVENTH
DEFENSE, MERCK ALLEGES:**

83. The claims of Plaintiff may be barred, in whole or in part, by the governing state laws.

**AS FOR A TWENTY-EIGHTH
DEFENSE, MERCK ALLEGES:**

84. Any conduct allegedly causing liability on the part of Merck is not a substantial cause or factor of any potential or actual injury or damage, if any.

**AS FOR A TWENTY-NINTH
DEFENSE, MERCK ALLEGES:**

85. Plaintiff has not sustained any injury or damages compensable at law.

**AS FOR A THIRTIETH
DEFENSE, MERCK ALLEGES:**

86. To the extent that Plaintiff seeks punitive damages for the conduct which allegedly caused injuries asserted in the Complaint, such an award would also, if granted, violate Merck's state and federal constitutional rights.

**AS FOR A THIRTY-FIRST
DEFENSE, MERCK ALLEGES:**

87. To the extent that Plaintiff seeks punitive damages for an alleged act or omission of Merck, no act or omission was malicious, willful, wanton, reckless, or grossly negligent and, therefore, any award of punitive damages is barred.

**AS FOR A THIRTY-SECOND
DEFENSE, MERCK ALLEGES:**

88. Plaintiff's demand for punitive damages is barred because Vioxx and its labeling was subject to and received pre-market approval by the FDA under 52 Stat. 1040, 21 U.S.C. § 301.

**AS FOR A THIRTY-THIRD
DEFENSE, MERCK ALLEGES:**

89. Plaintiff's claims are barred in whole or in part under comment k to Section 402A of the Restatement (Second) of Torts.

**AS FOR A THIRTY-FOURTH
DEFENSE, MERCK ALLEGES:**

90. Plaintiff's claims are barred in whole or in part because Merck provided adequate "directions or warnings" as to the use of Vioxx and any other drug or pharmaceutical preparation Plaintiff's decedent alleges to have taken within the meaning of comment j to Section 402A of the Restatement (Second) of Torts.

**AS FOR A THIRTY-FIFTH
DEFENSE, MERCK ALLEGES:**

91. Plaintiff's claims are barred under Section 4, et. seq., of the Restatement (Third) of Torts: Products Liability.

**AS FOR A THIRTY-SIXTH
DEFENSE, MERCK ALLEGES:**

92. Plaintiff's claims are barred in whole or in part because Vioxx "provides net benefits for a class of patients" within the meaning of comment f to Section 6 of the Restatement (Third) of Torts: Product Liability.

**AS FOR A THIRTY-SEVENTH
DEFENSE, MERCK ALLEGES:**

93. Plaintiff's claims are barred by the doctrine of contributory negligence.

**AS FOR A THIRTY-EIGHTH
DEFENSE, MERCK ALLEGES:**

94. This case is more appropriately brought in a different venue.

**AS FOR A THIRTY-NINTH
DEFENSE, MERCK ALLEGES:**

95. Defendants are improperly joined in this action.

**AS FOR A FORTIETH
DEFENSE, MERCK ALLEGES:**

96. Plaintiff's claims are barred, in whole or in part, because Plaintiff lacks standing to bring such claims.

Inasmuch as the Complaint does not describe the alleged underlying claims with sufficient particularity to enable Merck to determine all of its legal, contractual and equitable rights, Merck reserves the right to amend and supplement the averments of its answer to assert any and all pertinent liability defenses ascertained through further investigation and discovery of this action.

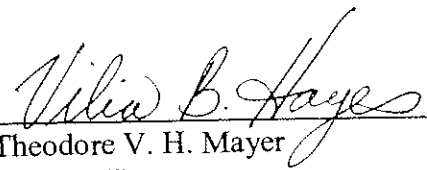
Merck will rely on all defenses that may become available during discovery or trial.

WHEREFORE, Merck respectfully demands judgment dismissing Plaintiff's Complaint with prejudice and awarding Merck its reasonable costs and disbursements, together with such and other and further relief that the Court may deem just and proper.

DATED: New York, New York
November 10, 2006

Respectfully submitted,

HUGHES HUBBARD & REED LLP

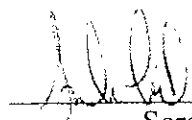
By: 
Theodore V. H. Mayer
Vilia B. Hayes
Robb W. Patryk
One Battery Park Plaza
New York, New York 10004-1482
(212) 837-6000

Attorneys for Defendant Merck & Co., Inc.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BROOME

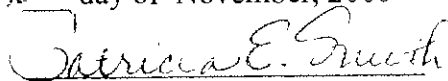
-----	- x	
	:	
LORI DUFRESNE, Individually and as personal	:	
representative for, FRANK SPENCER, deceased,	:	
	:	
Plaintiff,	:	No.: 2006-002135
	:	
-against-	:	<u>AFFIDAVIT OF SERVICE</u>
	:	
PFIZER, INC., PHARMACIA CORPORATION,	:	
a wholly-owned subsidiary of PFIZER, INC., and	:	
PHARMACIA & UPJOHN COMPANY, a	:	
wholly-owned subsidiary of PHARMACIA	:	
CORPORATION, and MERCK & CO., INC.,	:	
	:	
Defendants.	:	
-----	- x	

SARAH A. BINDER, being duly sworn, deposes and says that she is over the age of 18 years and not a party to this action, that she is associated with the firm of Hughes Hubbard & Reed, counsel for Defendant, and that, on November 16, 2006, she served a true and accurate copy of the Amended Answer of Defendant Merck & Co., Inc. via first-class mail, postage prepaid, on Plaintiff's counsel, Ronald R. Benjamin, Law Office of Ronald R. Benjamin, 126 Riverside Drive, P.O. Box 607, Binghamton, New York 13902, and on counsel for Defendants Pfizer, Inc., Pharmacia Corporation, and Pharmacia & Upjohn Company, Christopher Strongosky, DLA Piper US LLP, 1251 Avenue of the Americas, New York, NY 10020.



Sarah A. Binder

Sworn to before me this
16th day of November, 2006



Notary Public

PATRICIA E. SMITH
Notary Public, State of New York
No. 1SM4796951
Qualified in Richmond County
Certificate Filed in New York County
Commission Expires March 30, 2007

E-Filed Document
6

 **ORIGINAL**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BROOME

----- x
LORI DUFRESNE, individually and as personal :
representative for, FRANK SPENCER, deceased, :

Plaintiff,

-against-

PFIZER INC., PHARMACIA CORPORATION, a :
wholly-owned subsidiary of PFIZER INC., and :
PHARMACIA & UPJOHN COMPANY, a wholly :
owned subsidiary of PHARMACIA CORPORATION :
and MERCK, INC.,

Defendants.

Index No. ~~2007-000000~~

2/02996/07

NOTICE OF ENTRY

FILED


MAY 18 2007

**NEW YORK
COUNTY CLERK'S OFFICE**

PLEASE TAKE NOTICE that the attached is a true and correct copy of the Stipulation
and Order Changing Venue, dated April 4, 2007, and entered in the Office of the Clerk, Broome
County, on April 11, 2007.

Dated: New York, New York
April 13, 2007

E-Filed Document
#9

By: 
Christopher M. Strongosky
DLA PIPER US LLP
1251 Avenue of the Americas
New York, New York 10020-1104
212.335.4500

Attorneys for Pfizer Defendants

TO: Ronald R. Benjamin
LAW OFFICES OF RONALD R. BENJAMIN
126 Riverside Drive
Binghamton, New York 13902
(607) 772-1442

Attorneys for Plaintiff

Vilia B. Hayes
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000

Attorneys for Merck & Co., Inc.

FILED

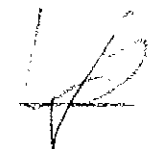
APR 16 2007

**BROOME COUNTY
CLERK'S OFFICE**

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Bk



RECEIVED

APR 11 2007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BROOME

----- x
LORI DUFRESNE, Individually and as personal
representative for, FRANK SPENCER, deceased,

Plaintiff,

-against-

PFIZER INC., PHARMACIA CORPORATION, a
wholly-own subsidiary of PFIZER INC., and
PHARMACIA & UPJOHN COMPANY, a wholly
owned subsidiary of PHARMACIA CORPORATION
and MERCK, INC.,

Defendants.
----- x

BROOME COUNTY CLERK

Index No. CA2006002135

**STIPULATION AND ORDER
CHANGING VENUE**

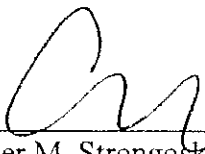
IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned counsel,
that the venue for the above-captioned case in the Supreme Court of the State of New York,
Broome County be transferred to the Supreme Court of the State of New York, New York
County, to be included in the Bextra and Celebrex Product Liability Coordinated Proceeding
(Index No. 762000/2006).

IT IS FURTHER STIPULATED AND AGREED that facsimile signatures on this
document shall have the same force and effect as an original signature.

LAW OFFICES OF RONALD R. BENJAMIN DLA PIPER US LLP

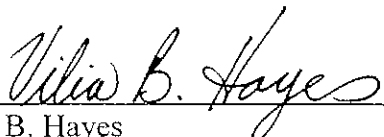
By: _____
Ronald R. Benjamin
LAW OFFICES OF RONALD R. BENJAMIN
126 Riverside Drive
Binghamton, New York 13902
(607) 772-1442

Attorneys for Plaintiffs

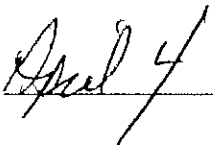
By:  _____
Christopher M. Strongosky
DLA PIPER US LLP
1251 Avenue of the Americas
New York, New York 10020
(212) 335.4500

Attorneys for Pfizer Defendants

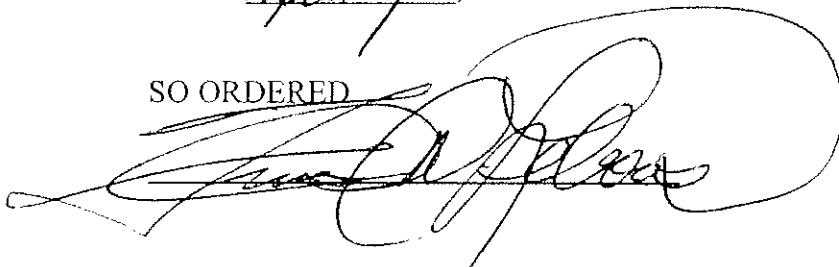
HUGHES HUBBARD & REED LLP

By:  _____
Vilia B. Hayes
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000


Attorneys for Merck & Co., Inc.

Dated: , 2007

SO ORDERED



LAW OFFICES OF RONALD R. BENJAMIN DLA PIPER US LLP

By: 
Ronald R. Benjamin
LAW OFFICES OF RONALD R. BENJAMIN
126 Riverside Drive
Binghamton, New York 13902
(607) 772-1442

Attorneys for Plaintiffs

By: _____
Christopher M. Strongosky
DLA PIPER US LLP
1251 Avenue of the Americas
New York, New York 10020
(212) 335.4500

Attorneys for Pfizer Defendants

HUGHES HUBBARD & REED LLP

By: _____
Vilia B. Hayes
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000

Attorneys for Merck & Co., Inc.

Dated: April 4, 2007

SO ORDERED

AFFIDAVIT OF SERVICE

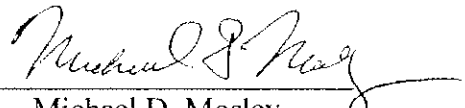
STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Michael D. Mosley, being duly sworn, deposes and says: I am over the age of 18 years old and not a party to this action. On the 13th day of April, 2007, I caused to be served a true copy of the foregoing Pfizer Defendants' NOTICE OF ENTRY on all counsel by mail at the following addresses:

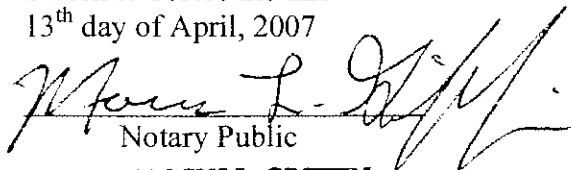
Ronald R. Benjamin
Law Offices of Ronald R. Benjamin
126 Riverside Drive
Binghamton, New York 13902

Vilia B. Hayes
Hughes Hubbard & Reed, LLP
One Battery Park Plaza
New York, New York 10004

the addresses designated by said attorney for that purpose. Service was completed by depositing true copies of same enclosed in postpaid properly addressed wrappers, in an official depository under the exclusive care and custody of the United States Postal Service.


Michael D. Mosley

Sworn to before me this
13th day of April, 2007


Notary Public

MARCUS L. GRIFFIN
Notary Public, State Of New York
No. 01GR5062272
Qualified in New York County
Commission Expires June 24, 2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BROOME

----- x
LORI DUFRESNE, Individually and as personal
representative for, FRANK SPENCER, deceased,

Plaintiff,

-against-

PFIZER INC., PHARMACIA CORPORATION, a
wholly-own subsidiary of PFIZER INC., and
PHARMACIA & UPJOHN COMPANY, a wholly
owned subsidiary of PHARMACIA CORPORATION
and MERCK, INC.,

Defendants.
----- x

Index No. ~~65700600213~~

07402986

**STIPULATION AND ORDER
CHANGING VENUE**

IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned counsel,
that the venue for the above-captioned case in the Supreme Court of the State of New York,
Broome County be transferred to the Supreme Court of the State of New York, New York
County, to be included in the Bextra and Celebrex Product Liability Coordinated Proceeding
(Index No. 762000/2006).

IT IS FURTHER STIPULATED AND AGREED that facsimile signatures on this
document shall have the same force and effect as an original signature.


E-Filed Document
8

FILED
MAY 18 2007
NEW YORK
COUNTY CLERK'S OFFICE

LAW OFFICES OF RONALD R. BENJAMIN DLA PIPER US LLP

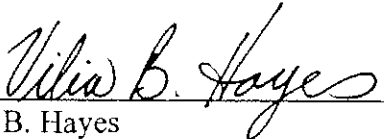
By: _____
Ronald R. Benjamin
LAW OFFICES OF RONALD R. BENJAMIN
126 Riverside Drive
Binghamton, New York 13902
(607) 772-1442

Attorneys for Plaintiffs

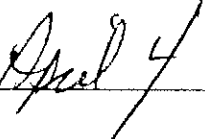
By:  _____
Christopher M. Strongosky
DLA PIPER US LLP
1251 Avenue of the Americas
New York, New York 10020
(212) 335.4500

Attorneys for Pfizer Defendants

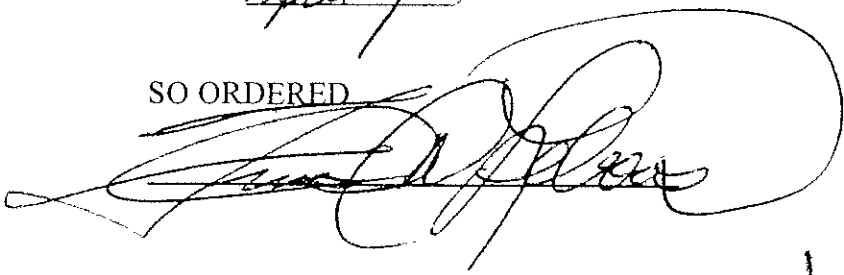
HUGHES HUBBARD & REED LLP

By:  _____
Vilia B. Hayes
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000

Attorneys for Merck & Co., Inc.

Dated: , 2007

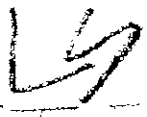

SO ORDERED



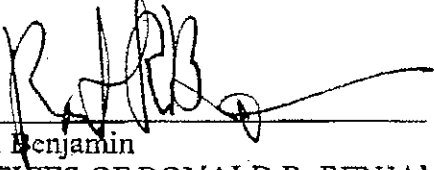
FILED

APR 11 2007

BROOME COUNTY
CLERK'S OFFICE

Comp.  _____
Ver.  _____
Bk. _____

LAW OFFICES OF RONALD R. BENJAMIN DLA PIPER US LLP

By: 
Ronald R. Benjamin
LAW OFFICES OF RONALD R. BENJAMIN
126 Riverside Drive
Binghamton, New York 13902
(607) 772-1442

Attorneys for Plaintiffs

By: _____
Christopher M. Strongosky
DLA PIPER US LLP
1251 Avenue of the Americas
New York, New York 10020
(212) 335.4500

Attorneys for Pfizer Defendants

HUGHES HUBBARD & REED LLP

By: _____
Vilia B. Hayes
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000

Attorneys for Merck & Co., Inc.

Dated: April 4, 2007

SO ORDERED

State of New York
Broome County Clerk's Office } as:

I, RICHARD R. BLYTHE, Clerk of the said County and of the County Court and Supreme Court of the State of New York, appointed to be held in and for said County, being Courts of Record, having a common seal, do hereby certify that I have compared the annexed copy of

Stipulation and Order Closing Matter
Lori DeFazio, Individually and as a representative for Frank Jones, deceased

Pfizer Inc. Pharmacia Corporation a wholly owned subsidiary with the record of
recorded *of Pfizer Inc. etc.* with the original
thereof filed and entered *April 11, 2007*

now remaining on file and of record in my office, and that the same is a correct and true copy of said original, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the said County and Courts, at the City of Binghamton, this

24th day of *April*, 2007.
By *Rosaline C. Catalano* Deputy Clerk

Supreme New York 402996/07 5/18/2007
COURT COUNTY INDEX NO. DATE PURCHASED

PLAINTIFF(S)

Lori Dufresne, Individually and as personal representative for Frank Spencer, deceased

DEFENDANT(S)

Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and
Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation,
and Merck & Co., Inc.

COURTESY COPY
Original E-filed as
Document # 3

For Clerk Only

FEB 26 2008

002227-003677

Judge Assigned

Ref Date

Date issue joined: N/A

Bill of particulars served (Y/N) ☐ Yes ☒ No

NATURE OF JUDICIAL INTERVENTION (check ONE box only AND enter information)

☐ Request for preliminary conference

☐ Note of issue and/or certificate of readiness

☒ Notice of motion (return date: 3/6/2008)

Relief sought Motion to Dismiss

☐ Order to show cause (clerk enter return date:)

Relief sought

☐ other ex parte application (specify:)

☐ Notice of petition (return date:)
Relief sought

☐ Notice of medical or dental malpractice action (specify:)

☐ Statement of net worth

☐ Writ of habeas corpus

☐ other (specify:)

NYS
UNIFIED COURT SYSTEM
MAR 04 2008
REVIEWED
EF RESOURCE CENTER

NATURE OF ACTION OR PROCEEDING (check ONE box only)

MATRIMONIAL

☐ Contested ☐ Uncontested

COMMERCIAL

☐ Contract
☐ Corporate
☐ Insurance (where insurer is a party, except arbitration)
☐ UCC (including sales, negotiable instruments)
☐ *Other Commercial

REAL PROPERTY

☐ Tax Certiorari
☐ Foreclosure
☐ Condemnation
☐ Landlord/Tenant
☐ *Other Real Property

OTHER MATTERS

☐ *

TORTS

Malpractice

☐ Medical/Podiatric
☐ Dental
☐ *Other Professional

☐ Motor Vehicle
☒ *Products Liability

Pharmaceutical

☐ Environmental
☐ Asbestos
☐ Breast Implant
☐ *Other Negligence

☐ *Other Tort (including intentional)

SPECIAL PROCEEDINGS

☐ Art. 75 (Arbitration)
☐ Art. 77 (Trusts)
☐ Art. 78
☐ Election Law
☐ Guardianship (MHL Art. 81)
☐ *Other Mental Hygiene
☐ *Other Special Proceeding

-ART75
-ART77
-ART78
-ELEC
-GUARD81
-MHYG
-OSP

YES" or "NO" for each of the following questions:

is this action/proceeding against a

YES NO

☐ ☒ Municipality:

(specify _____)

YES NO

☐ ☒ Public Authority:

(specify _____)

YES NO

☐ ☒ Does this action/proceeding seek equitable relief?

☒ ☐ Does this action/proceeding seek recovery for personal injury?

☐ ☒ Does this action/proceeding seek recovery for property damage?

Pre-Note Time Frames:

(This applies to all cases except contested matrimonials and tax certiorari cases)

Estimated time period for case to be ready for trial (from filing of RJ1 to filing of Note of Issue):

☐ Expedited: 0-8 months

☐ Standard: 9-12 months

☒ Complex: 13-15 months

Contested Matrimonial Cases Only: (Check and give date)

Has summons been served?

☐ No

☐ Yes, Date _____

Was a Notice of No Necessity filed?

☐ No

☐ Yes, Date _____

ATTORNEY(S) FOR PLAINTIFF(S)

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
<input type="checkbox"/>	See Rider Sheet		
<input type="checkbox"/>			

ATTORNEY(S) FOR DEFENDANT(S)

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
<input type="checkbox"/>	See Rider Sheet		
<input type="checkbox"/>			

*Self Represented: parties representing themselves, without an attorney, should check the "Self Rep." box and enter their name, address, and phone # in the space provided above for attorneys.

INSURANCE CARRIERS:

RELATED CASES: (IF NONE, write "NONE" below)

<u>Title</u>	<u>Index #</u>	<u>Court</u>	<u>Nature of Relationship</u>
--------------	----------------	--------------	-------------------------------

In re: New York Bextra and Celebrex Product Liability Litigation, Index No. 762000/06, Supreme Court, New York County

I AFFIRM UNDER PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: 2/8/2008


(SIGNATURE)

Tiffany L. Christian

(PRINT OR TYPE NAME)

Pfizer Inc. (see Rider)

ATTORNEY FOR

ATTACH RIDER SHEET IF NECESSARY TO PROVIDE REQUIRED INFORMATION

RIDER SHEET

Attorneys for Plaintiffs

Ronald R. Benjamin
LAW OFFICES OF RONALD R. BENJAMIN
126 Riverside Drive
P.O. Box 607
Binghamton, New York 13902-0607
(607) 772-1442

Attorneys for Defendants

Christopher M. Strongosky
Tiffany L. Christian
DLA PIPER US LLP
1251 Avenue of the Americas
New York, New York 10020
(212) 335-4500



STATE OF NEW YORK
UNIFIED COURT SYSTEM
FIRST JUDICIAL DISTRICT
SUPREME COURT, CIVIL BRANCH
60 CENTRE STREET
NEW YORK, NEW YORK 10007-1474
(548) 386-3170
FAX (212) 374-1803

JONATHAN LIPPMAN
Chief Administrative Judge

JOAN B. CAREY
Deputy Chief Administrative Judge
New York City Court

JACQUELINE W. SILBERMANN
Administrative Judge
First Judicial District
Supreme Court, Civil Branch

ADMINISTRATIVE ORDER

By the authority vested in me as Administrative Judge of the Supreme Court, Civil Branch, New York County, in light of the Decisions and Orders of the Litigation Coordinating Panel of the State of New York identified below, and pursuant to Section 202.69 (c) (1) of the Uniform Rules for the Trial Courts, and in view of the facts that the Supreme Court, Civil Branch, New York County has established a Center for Complex Litigation in implementation of the recommendations of the Comprehensive Civil Justice Program -- 2005 and the undersigned, by Administrative Order dated February 21, 2006, has assigned several Justices to said Center,

IT IS HEREBY ORDERED as follows:

Bextra, Celebrex and Vioxx Cases

1. Pursuant to Administrative Order dated December 2, 2005, various cases seeking damages for personal injury from ingestion of the drug Bextra only, were assigned to Hon. Shirley W. Kornreich, one of the Justices of the Center, for the purpose of coordination as set forth in Uniform Rule 202.69 and, in the case of New York County matters, for all other purposes as well.

2. All other cases currently pending in Supreme Court, New York County, or hereafter commenced here in which the plaintiff seeks damages for personal injury alleged to have resulted from ingestion of Bextra, Celebrex, or Vioxx, whether alone or in any combination, shall be assigned to Justice Kornreich for all purposes.

Hormone Replacement Therapy

3. All cases seeking damages for personal injury alleged to have occurred as a result of the ingestion of medications in the course of hormone replacement therapy ("Hormone

Replacement Therapy Actions”) that are currently pending in the Supreme Court, Civil Branch, New York County or that shall hereafter be commenced in this County shall be assigned to Hon. Martin Shulman, one of the Justices of the Center, for the purpose of coordination as set forth below and for all other purposes.

4. In addition, the Litigation Coordinating Panel, by Decision and Order dated March 27, 2006 in the matter of Marshall v. Pfizer, Inc., Index No. 105816/2004 (New York County), Panel Case No. 0004/2005, has directed that Hormone Replacement Therapy Actions shall be coordinated pursuant to Uniform Rule 202.69 in the Supreme Court of the State of New York, County of New York, before a Coordinating Justice of that county. Justice Shulman is hereby designated the Coordinating Justice for the coordination directed by the Panel in the said Decision and Order.

5. Pursuant to the Decision and Order of the Panel, all the actions set forth in the caption and Appendix thereof, and any other Hormone Replacement Therapy Actions that were filed as of the date of the Decision and Order and that remain active but that were not included in the caption or Appendix thereof and that are transferred to this County pursuant to the Decision and Order, and any other such Actions as may be filed and transferred subsequent to the date of the Decision and Order shall be assigned to Justice Shulman for purposes of the coordination.

Fleet Phospho Soda Cases

6. All cases seeking damages for personal injury alleged to have occurred as a result of the use of Fleet Phospho Soda as a bowel cleanser (“Fleet Phospho Soda Actions”) that are currently pending in the Supreme Court, Civil Branch, New York County or that shall hereafter be commenced in this County shall be assigned to Hon. Marcy S. Friedman, one of the Justices of the Center, for the purpose of coordination as set forth below and for all other purposes.

7. In addition, the Litigation Coordinating Panel, by Decision and Order dated March 28, 2006 in the matter of Goldwasser v. C.B. Fleet Holding Company, Inc., Index No. 117698/2004 (New York County), Panel Case No. 0005/2005, has directed that Fleet Phospho Soda Actions shall be coordinated pursuant to Uniform Rule 202.69 in the Supreme Court of the State of New York, County of New York, before a Coordinating Justice of that county. Justice Friedman is hereby designated the Coordinating Justice for the coordination directed by the Panel in the said Decision and Order.

8. Pursuant to the Decision and Order of the Panel, all the actions set forth in the caption and Appendix thereof (which does not include Strank v. C.B. Fleet Holding Co., Inc.,

Index No. 101324/2005 (New York County)), and any other Fleet Phospho Soda Actions that were filed as of the date of the Decision and Order and that remain active but that were not included in the caption or Appendix thereof and that are transferred to this County pursuant to the Decision and Order, and any other such Actions as may be filed and transferred subsequent to the date of the Decision and Order shall be assigned to Justice Friedman for purposes of the coordination.

Neurontin Cases

9. All cases seeking damages for personal injury or wrongful death alleged to have occurred as a result of the ingestion of the prescription medication Neurontin ("Neurontin Actions") that are currently pending in the Supreme Court, Civil Branch, New York County or that shall hereafter be commenced in this County shall be assigned to Hon. Marcy S. Friedman for the purpose of coordination as set forth below and for all other purposes.

10. In addition, the Litigation Coordinating Panel, by Decision and Order dated March 31, 2006 in the matter of Delaney v. Pfizer, Inc., Index No. 117852/2004 (New York County), Panel Case No. 0002/2006, has directed that Neurontin Actions shall be coordinated pursuant to Uniform Rule 202.69 in the Supreme Court of the State of New York, County of New York, before a Coordinating Justice of that county. Justice Friedman is hereby designated the Coordinating Justice for the coordination directed by the Panel in the said Decision and Order.

11. Pursuant to the Decision and Order of the Panel, all the actions set forth in the caption and Appendix thereof, and any other Neurontin Actions that were filed as of the date of the Decision and Order and that remain active but that were not included in the caption or Appendix thereof and that are transferred to this County pursuant to the Decision and Order, and any other such Actions as may be filed and transferred subsequent to the date of the Decision and Order shall be assigned to Justice Friedman for purposes of the coordination.

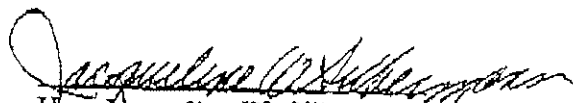
All Cases

12. A Request for Judicial Intervention shall be filed in every case covered by this Order. In cases that are transferred to this County from another for the purpose of coordination, an RJJ shall be issued by the Clerk without fee if a party has already paid for an RJJ in another County. The Clerks of the relevant back offices shall assign or reassign the cases covered by this Order, those pending or hereafter filed here and those transferred to this County from another County for coordination as set forth above. Attorneys who hereafter file in this court any of the kinds of matters set forth above or who effect transfer of any such

matters to this court for coordination as directed by the Litigation Coordinating Panel in any of the Decisions and Orders set forth above shall identify on the Request for Judicial Intervention the kind of case involved (e.g., Neurontin Action) and shall attach to the RJI a copy of this Administrative Order.

Dated: New York, New York

April 14, 2006


Hon. Jacqueline W. Silbermann
Administrative Judge

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Luke K. Tamura, being duly sworn, deposes and says: I am over the age of 18 years old and not a party to this action. On the 8th day of February, 2008, I caused to be served a true copy of the foregoing Pfizer Defendants' REQUEST FOR JUDICIAL INTERVENTION on the following counsel by U.S. mail:

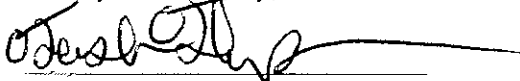
Ronald R. Benjamin
LAW OFFICES OF RONALD R. BENJAMIN
126 Riverside Drive
P.O. Box 607
Binghamton, New York 13902-0607

the address designated by said attorney for that purpose. Service was completed by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service.



Luke K. Tamura

Sworn to before me this
8th day of February, 2008


Notary Public

TARSHA THOMPSON
Notary Public, State of New York
No. 07116020509
Qualified in Bronx County
Commission Expires May 7, 2011

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Luke K. Tamura, being duly sworn, deposes and says: I am over the age of 18 years and not a party to this action. On the 11th day of February, 2008, I caused to be served a true copy of the foregoing Pfizer Defendants' REQUEST FOR JUDICIAL INTERVENTION on counsel by overnight delivery at the following address:

Vilia B. Hayes
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, NY 10004

the address designated by said attorney for that purpose. Service by overnight delivery was completed by depositing a true copy of same enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery.



Luke K. Tamura

Sworn to before me this
13th day of February, 2008



Notary Public

JEROME McCAIN
Notary Public, State of New York
No. 01MC5050517
Qualified in Bronx County
Certificate Filed In New York County
Commission Expires December 11, 2009

REQUEST FOR JUDICIAL INTERVENTION

Supreme
COURTBroome
COUNTY

INDEX NO.

10/2/2006

DATE PURCHASED

PLAINTIFF(S)

LORI DUFRESNE, Individually and as personal representative for, FRANK SPENCER,
deceased,

DEFENDANT(S)

PFIZER INC., PHARMACIA CORPORATION, a wholly-owned subsidiary of PFIZER
INC., and PHARMACIA & UPJOHN COMPANY, a wholly-owned subsidiary of
PHARMACIA CORPORATION and MERCK, INC.This document has
NOT been
E-Filed

For Clerk Only

IAS entry

3-19-07

Judge Assigned

Ferris D. Ribas

RJI Date

3-6-07

Date issue joined: N/A

Bill of particulars served (Y/N) ☐ Yes ☒ NoNATURE OF JUDICIAL INTERVENTION (check ONE box only AND enter information)

- ☐ Request for preliminary conference
- ☐ Note of issue and/or certificate of readiness
- ☒ Notice of motion (return date: 4-4-07)
Relief sought Change of Venue
- ☐ Order to show cause
(clerk enter return date: _____)
Relief sought _____
- ☐ other ex parte application (specify: _____)

- ☐ Notice of petition (return date: _____)
Relief sought _____
- ☐ Notice of medical or dental malpractice
action (specify: _____)
- ☐ Statement of net worth _____
- ☐ Writ of habeas corpus _____
- ☐ other (specify: _____)

RECEIVED

MAR 06 2007

NATURE OF ACTION OR PROCEEDING (check ONE box only)

MATRIMONIAL

- ☐ Contested ☐ Uncontested

-CM
-UM

COMMERCIAL

- ☐ Contract
- ☐ Corporate
- ☐ Insurance (where insurer is a party, except arbitration)
- ☐ UCC (including sales, negotiable instruments)
- ☐ *Other Commercial

-CONT
-CORP
-INS-UCC
-OC

REAL PROPERTY

- ☐ Tax Certiorari
- ☐ Foreclosure
- ☐ Condemnation
- ☐ Landlord/Tenant
- ☐ *Other Real Property

-TAX
-FOR
-COND
-LT
-ORP

OTHER MATTERS

- ☐ *

TORTS

Malpractice

- ☐ Medical/Podiatric
- ☐ Dental
- ☐ *Other Professional

-MM
-DM
-OPM

- ☐ Motor Vehicle
- ☒ *Products Liability

-MV
-PL

Pharmaceutical

- ☐ Environmental
- ☐ Asbestos
- ☐ Breast Implant
- ☐ *Other Negligence

-EN
-ASB
-BI
-OTN

- ☐ *Other Tort (including intentional)

-OT

SPECIAL PROCEEDINGS

- ☐ Art. 75 (Arbitration)
- ☐ Art. 77 (Trusts)
- ☐ Art. 78
- ☐ Election Law
- ☐ Guardianship (MHL Art. 81)
- ☐ *Other Mental Hygiene
- ☐ *Other Special Proceeding

-ART75
-ART77
-ART78
-ELEC
-GUARD81
-MHYG
-OSPE-Filed Document
7

" or "No" for each of the following questions:

this action/proceeding against a

YES NO

☐ ☒ Municipality:

(specify _____)

YES NO

☐ ☒ Public Authority:

(specify _____)

YES NO

☐ ☒ Does this action/proceeding seek equitable relief?

☒ ☐ Does this action/proceeding seek recovery for personal injury?

☐ ☒ Does this action/proceeding seek recovery for property damage?

Pre-Note Time Frames:

[This applies to all cases except contested matrimonials and tax certiorari cases]

Estimated time period for case to be ready for trial [from filing of RJ1 to filing of Note of Issue]:

☐ Expedited: 0-8 months

☐ Standard: 9-12 months

☒ Complex: 13-15 months

Contested Matrimonial Cases Only: [Check and give date]

Has summons been served?

☐ No

☐ Yes, Date _____

Was a Notice of No Necessity filed?

☐ No

☐ Yes, Date _____

ATTORNEY(S) FOR PLAINTIFF(S)

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
<input type="checkbox"/>	See Rider Sheet		
<input type="checkbox"/>			

ATTORNEY(S) FOR DEFENDANT(S)

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
<input type="checkbox"/>	See Rider Sheet		
<input type="checkbox"/>			

*Self Represented: parties representing themselves, without an attorney, should check the "Self Rep." box and enter their name, address, and phone # in the space provided above for attorneys.

INSURANCE CARRIERS:

RELATED CASES: [IF NONE, write "NONE" below]

Title Index # Court Nature of Relationship

None

I AFFIRM UNDER PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: 03/15/2007

(SIGNATURE)

Christopher M. Strongosky

(PRINT OR TYPE NAME)

Pfizer Inc. (see Rider)

ATTORNEY FOR

ATTACH RIDER SHEET IF NECESSARY TO PROVIDE REQUIRED INFORMATION

RIDER SHEET

Attorneys for Plaintiffs

Ronald R. Benjamin
Law Offices of Ronald R. Benjamin
126 Riverside Drive
Binghamton, New York 13902
(607) 772-1442

Attorneys for Pfizer
Defendants
(PFIZER, INC.,
PHARMACIA CORP.,
PHARMACIA & UPJOHN,
INC)

Christopher M. Strongosky
DLA PIPER US LLP
1251 Avenue of the Americas
New York, New York 10020
(212) 335-4500

Attorneys for Merck & Co.,
Inc.

Vilia B. Hayes.
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000

AFFIDAVIT OF SERVICE

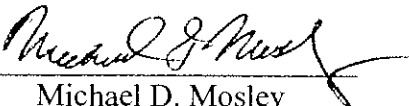
STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Michael D. Mosley, being duly sworn, deposes and says: I am over the age of 18 years old and not a party to this action. On the 15th day of March, 2007, I caused to be served a true copy of the foregoing Pfizer Defendants' REQUEST FOR JUDICIAL INTERVENTION on all counsel by mail at the following addresses:

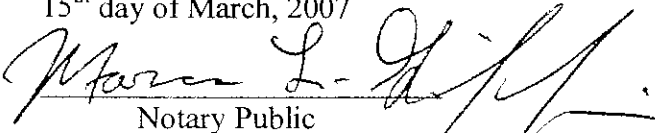
Ronald R. Benjamin
Law Offices of Ronald R. Benjamin
126 Riverside Drive
Binghamton, New York 13902

Vilia B. Hayes
Hughes Hubbard & Reed, LLP
One Battery Park Plaza
New York, New York 10004

the addresses designated by said attorney for that purpose. Service was completed by depositing true copies of same enclosed in postpaid properly addressed wrappers, in an official depository under the exclusive care and custody of the United States Postal Service.


Michael D. Mosley

Sworn to before me this
15th day of March, 2007


Notary Public

MARCUS L. GRIFFIN
Notary Public, State Of New York
No. 01GR5062272
Qualified in New York County
Commission Expires June 24, 2010

402996-07
 SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK

COURTESY COPY
 Original E-filed as
 Document # (4)

IN RE: NEW YORK BEXTRA AND CELEBREX
 PRODUCT LIABILITY LITIGATION 003677

Index No. 762000/06

Hon. Shirley W. Kornreich

002227

THIS DOCUMENT APPLIES TO:

LORI DUFRESNE, Individually and as personal
 representative for FRANK SPENCER, deceased,

Index No. 402996/07

Plaintiffs,

v.

PFIZER INC., PHARMACIA CORPORATION, a wholly-
 owned subsidiary of PFIZER INC., and PHARMACIA &
 UPJOHN COMPANY, a wholly-owned subsidiary of
 PHARMACIA CORPORATION, and MERCK & CO., INC.,

FILED
 NOTICE OF MOTION
 TO DISMISS

COMPLIANCE MOTION
 NO. 2)

COUNTY CLERK'S OFFICE
 NEW YORK

Defendants.

PLEASE TAKE NOTICE that upon the Affirmation of Christopher M. Strongosky dated February 8, 2008, the exhibit annexed thereto, and all the files, papers, and proceedings herein, the undersigned will move this Court on behalf of Defendants Pfizer Inc., Pharmacia Corporation, and Pharmacia & Upjohn Company (collectively "Pfizer Defendants") at the Courthouse, located at 60 Centre Street, New York, New York, at Room 130, on the 6th day of March, 2008 at 9:30 a.m., or as soon thereafter as counsel can be heard, and move this Court for an Order dismissing Plaintiffs' claims against Pfizer Defendants with prejudice for failing to comply with Case Management Order No. 6 and the Order entered by the Special Master, United States District Judge Fern M. Smith (Ret.), on November 5, 2007.

PLEASE TAKE FURTHER NOTICE that, pursuant to Case Management Order No. 6, paragraph 10.f., answering papers, if any, are required to be served upon the undersigned at least ten (10) days before the return date of this motion, and reply papers, if any, are required to be served at least five (5) days before the return date of this motion.

Dated: New York, New York
February 8, 2008



Amy W. Schulman, Esq.
Loren H. Brown, Esq.
Christopher M. Strongosky, Esq.
DLA PIPER US LLP
1251 Avenue of the Americas
New York, New York 10020
(212) 835-6000

Attorneys for Pfizer Defendants

TO: Ronald R. Benjamin
LAW OFFICES OF RONALD R. BENJAMIN
126 Riverside Drive
P.O. Box 607
Binghamton, New York 13902-0607
(607) 772-1442

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
:
IN RE: NEW YORK BEXTRA AND CELEBREX : Index No. 762000/06
PRODUCT LIABILITY LITIGATION :
:
:
----- X

THIS DOCUMENT APPLIES TO:
----- X

LORI DUFRESNE, Individually and as personal
representative for FRANK SPENCER, deceased,

Plaintiffs,

v.

PFIZER INC., PHARMACIA CORPORATION, a wholly-
owned subsidiary of PFIZER INC., and PHARMACIA &
UPJOHN COMPANY, a wholly-owned subsidiary of
PHARMACIA CORPORATION, and MERCK & CO., INC.,

Defendants.
----- X

Index No. 402996/07

AFFIRMATION OF
CHRISTOPHER M.
STRONGOSKY

(COMPLIANCE MOTION
NO. 2)

CHRISTOPHER M. STRONGOSKY, an attorney duly admitted to practice law before
the courts of the State of New York, hereby affirms under the penalties of perjury as follows:

1. I am a member of the law firm of DLA Piper US LLP, attorneys for Defendants
Pfizer Inc., Pharmacia Corporation and Pharmacia & Upjohn Company (the "Pfizer
Defendants") in this case. I am fully familiar with the facts and circumstances of this matter.

2. Attached hereto as Exhibit 1 is a true and correct copy of Special Master Fern M.
Smith's November 5, 2007 Order ("Compliance Order") granting Defendants' expedited motion
seeking an Order requiring compliance with Case Management Order No. 6.

3. Pursuant to the Compliance Order, Plaintiffs were required to serve a Plaintiff
Fact Sheet ("PFS") within twenty-one (21) days of the Order. Judge Smith also ordered that

“[f]ailure to comply with this Order may result in any of the sanctions referred to in CMO No. 6, including dismissal with prejudice.” Ex. 1, Compliance Order.

4. Plaintiffs have failed to serve Pfizer Defendants with a PFS within twenty-one (21) days of the Compliance Order, or at any time since.

5. As authorized by CMO No. 6, paragraphs 7, 9, and 10, based on the failure of Plaintiffs to serve a PFS pursuant to CMO No. 6, and thereafter pursuant to Judge Smith’s November 5, 2007 Compliance Order, Plaintiffs’ causes of action against Pfizer Defendants should be dismissed with prejudice.

6. No prior relief has been sought.

Dated: New York, New York
February 8, 2008

A handwritten signature in black ink, appearing to read 'CS', is written above a horizontal line.

Christopher M. Strongosky

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
: IN RE: NEW YORK BEXTRA AND CELEBREX
: PRODUCT LIABILITY LITIGATION
: ORDER GRANTING
: DEFENDANTS' EXPEDITED
: MOTION SEEKING ORDER
: REQUIRING COMPLIANCE
: WITH CASE MANAGEMENT
: ORDER NO. 6
: (COMPLIANCE MOTION
: NO. 2)
: X


----- X
: THIS DOCUMENT APPLIES ONLY TO CASES
: LISTED ON APPENDIX A
: X

THIS MATTER having come before the Court on Defendants' Expedited Motion Seeking Order Requiring Compliance with Case Management Order ("CMO") No. 6; the parties having received due notice and having had the opportunity to be heard; and this Court having considered all submissions made in support of and in opposition to the motion:

IT IS HEREBY ORDERED THAT Defendants' Expedited Motion Seeking Order Requiring Compliance with CMO No. 6 is GRANTED. Plaintiffs listed in Appendix A must serve on Defendants a completed Plaintiff Fact Sheet, correctly executed Authorizations, and Responsive Documents (or notice that none are in the possession of Plaintiff or Plaintiff's counsel) within twenty-one (21) days of the date of entry of this Order.

Failure to comply with this Order may result in any of the sanctions referred to in CMO No. 6, including dismissal with prejudice.

Dated: November 5, 2007


Honorable Fern M. Smith
United States District Judge (Ret.)
Special Master

FILED
NOV 14 2007
NEW YORK
CLERK'S OFFICE

APPENDIX A

	<u>Case Caption</u>	<u>Plaintiff Name</u>	<u>Index No.</u>	<u>Plaintiff's Counsel</u>
1	Carol Adelberg, et ux., Arthur Adelberg, and Antonio Amendoeira, et ux. Maria Amendoeira vs. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation and Merck & Co., Inc.	Adelberg, Carol	401585/07	Law Office of Ronald R. Benjamin
2	Geraldine Alapeck v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Alapeck, Geraldine	111293/06	Law Office of Ronald R. Benjamin
3	Joseph Apice v. Pfizer Inc.	Apice, Joseph	150418/07	Weitz & Luxenberg, P.C.
4	Carolyn Barney v. Pfizer Inc.	Barney, Carolyn	150100/07	Matthews & Associates; Napoli Bern Ripka, LLP
5	Josephine Bartlett, et ux. Carl Bartlett, Maria Rozario, et ux. Cyril Rozario, Michael Smith, et ux. Bonnie Lou Mitchell, and Pamela Saccone v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation	Bartlett, Josephine	116111/04	Law Office of Ronald R. Benjamin
6	Ben Beecham v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Beecham, Ben	105679/07	Matthews & Associates

	<u>Case Caption</u>	<u>Plaintiff Name</u>	<u>Index No.</u>	<u>Plaintiff's Counsel</u>
7	Andrea S. Golub and Robert S. Golub, Cheryl Singer, et ux. Bruce Singer, Anthony Bilik, et ux. Genevie Bilik, Patricia Jarvis, et ux. James J. Jarvis, Barbara I. Lupole, et ux. Donald H. Lupole, and Rebecca M. House v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc	Bilik, Anthony	101550/05	Law Office of Ronald R. Benjamin
8	Helen Bilik, Elizabeth Boone, Mary J. Mahar, Carolyn S. Croft, Geraldine M. Alapeck, Dean Santacrose, and Stasia Simmons vs. Pfizer Inc., Pharmacia Corporation, a wholly-own subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Bilik, Helen	106237/05	Law Office of Ronald R. Benjamin
9	Ronald Bramson and Elaine Bramson v. Pfizer Inc.	Bramson, Ronald	101271/07	Douglas & London, P.C.
10	Minnie H. Young, Individually and as Executrix of the Estate of Renee Burnett, Deceased v. Pfizer Inc., Pharmacia Corp, f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Burnett, Renee	150333/07	Matthews & Associates; Napoli Bern Ripka, LLP
11	Janice D. Bush v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Bush, Janice D.	150047/07	Matthews & Associates; Napoli Bern Ripka, LLP

	<u>Case Caption</u>	<u>Plaintiff Name</u>	<u>Index No.</u>	<u>Plaintiff's Counsel</u>
12	Samuella D. Cadwell and Albert D. Cadwell, Wilbert E. Corprew, et ux, Carol Corprew, Elsa Plocek, et ux. Marian Plocek, and Ronald H. Schaffer, et ux. Beverly Schaffer v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Cadwell, Albert	106547/05	Law Office of Ronald R. Benjamin
13	Samuella D. Cadwell and Albert D. Cadwell, Wilbert E. Corprew, et ux, Carol Corprew, Elsa Plocek, et ux. Marian Plocek, and Ronald H. Schaffer, et ux. Beverly Schaffer v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Cadwell, Samuella	106547/05	Law Office of Ronald R. Benjamin
14	Sixta A. Claudio v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Claudio, Sixta A.	150334/07	Matthews & Associates; Napoli Bern Ripka, LLP
15	Timothy A. Corkran v. Pfizer Inc.	Corkran, Timothy A.	150117/07	Matthews & Associates; Napoli Bern Ripka, LLP
16	Samuella D. Cadwell and Albert D. Cadwell, Wilbert E. Corprew, et ux, Carol Corprew, Elsa Plocek, et ux. Marian Plocek, and Ronald H. Schaffer, et ux. Beverly Schaffer v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Corprew, Wilbert E.	106547/05	Law Office of Ronald R. Benjamin

	<u>Case Caption</u>	<u>Plaintiff Name</u>	<u>Index No.</u>	<u>Plaintiff's Counsel</u>
17	Carolyn Croft v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Croft, Caroline S.	111295/06	Law Office of Ronald R. Benjamin
18	Altoria Dallas v. Pfizer Inc.	Dallas, Altoria	150118/07	Matthews & Associates; Napoli Bern Ripka, LLP
19	Patricia J. Danberry v. Pfizer Inc.	Danberry, Patricia J.	150119/07	Matthews & Associates; Napoli Bern Ripka, LLP
20	Joseph DeStefano v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	DeStefano, Joseph	150071/07	Matthews & Associates; Napoli Bern Ripka, LLP
21	Shirley Diggs v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Diggs, Shirley	150266/07	Napoli Bern Ripka, LLP; Watts Law Firm
22	Michael D. Donovan v. Pfizer Inc.	Donovant, Michael D.	104609/07	Matthews & Associates
23	Mayra Figueroa v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Figueroa, Mayra	111296/06	Law Office of Ronald R. Benjamin

	<u>Case Caption</u>	<u>Plaintiff Name</u>	<u>Index No.</u>	<u>Plaintiff's Counsel</u>
24	Andrea S. Golub and Robert S. Golub, Cheryl Singer, et ux. Bruce Singer, Anthony Bilik, et ux. Genevie Bilik, Patricia Jarvis, et ux. James J. Jarvis, Barbara I. Lupole, et ux. Donald H. Lupole, and Rebecca M. House v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc	Golub, Robert	101550/05	Law Office of Ronald R. Benjamin
25	Teri L. Hall v. Pfizer Inc.	Hall, Teri L.	150359/07	Matthews & Associates; Napoli Bern Ripka, LLP
26	Glenna M. Harrison and Roger Harrison, w/h v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Harrison, Glenna M.	150260/07	Napoli Bern Ripka, LLP; Watts Law Firm
27	Dorothy M. Hocker v. Pfizer Inc.	Hocker, Dorothy M.	150150/07	Matthews & Associates; Napoli Bern Ripka, LLP
28	Andrea S. Golub and Robert S. Golub, Cheryl Singer, et ux. Bruce Singer, Anthony Bilik, et ux. Genevie Bilik, Patricia Jarvis, et ux. James J. Jarvis, Barbara I. Lupole, et ux. Donald H. Lupole, and Rebecca M. House v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc	House, Rebecca M.	101550/05	Law Office of Ronald R. Benjamin
29	Ruth Ice v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Ice, Ruth	150255/07	Napoli Bern Ripka, LLP; Watts Law Firm

	<u>Case Caption</u>	<u>Plaintiff Name</u>	<u>Index No.</u>	<u>Plaintiff's Counsel</u>
30	Kevin D. James v. Pfizer Inc.	James, Kevin D.	150172/07	Matthews & Associates; Napoli Bern Ripka, LLP
31	Barbara Jaros, Bruce D. Peer, et ux. Pamela K. Peer, Ronald Quackenbush, Sr., and Sharon Seymour Quackenbush v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Jaros, Barbara	116110/04	Law Office of Ronald R. Benjamin
32	Andrea S. Golub and Robert S. Golub, Cheryl Singer, et ux. Bruce Singer, Anthony Bilik, et ux. Genevie Bilik, Patricia Jarvis, et ux. James J. Jarvis, Barbara I. Lupole, et ux. Donald H. Lupole, and Rebecca M. House v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Jarvis, Patricia	101550/05	Law Office of Ronald R. Benjamin
33	Joseph E. Jenkins, III v. Pfizer Inc.	Jenkins, III, Joseph E.	150361/07	Matthews & Associates; Napoli Bern Ripka, LLP
34	Shirley A. Jenkins v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Jenkins, Shirley A.	150051/07	Matthews & Associates; Napoli Bern Ripka, LLP
35	Merton J. Kreps, Sr. v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Kreps, Sr., Merton J.	150050/07	Matthews & Associates; Napoli Bern Ripka, LLP
36	George Lacey and Roxanne S. Lacey, w/h v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co., and Monsanto Company	Lacey, George	150349/07	Matthews & Associates; Napoli Bern Ripka, LLP

	<u>Case Caption</u>	<u>Plaintiff Name</u>	<u>Index No.</u>	<u>Plaintiff's Counsel</u>
37	Lester A. Lamb v. Pfizer Inc.	Lamb, Lester A.	150160/07	Matthews & Associates; Napoli Bern Ripka, LLP
38	Andrea S. Golub and Robert S. Golub, Cheryl Singer, et ux. Bruce Singer, Anthony Bilik, et ux. Genevie Bilik, Patricia Jarvis, et ux. James J. Jarvis, Barbara I. Lupole, et ux. Donald H. Lupole, and Rebecca M. House v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc	Lupole, Barbara I.	101550/05	Law Office of Ronald R. Benjamin
39	Mary Mahar v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Mahar, Mary J.	111300/06	Law Office of Ronald R. Benjamin
40	Anthony Marchetti and Beverly Marchetti, h/w v. Pfizer Inc.	Marchetti, Anthony	113362/06	Weitz & Luxenberg, P.C.
41	Beth A. McAllen v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	McAllen, Beth A.	150080/07	Matthews & Associates; Napoli Bern Ripka, LLP
42	Marion McCaskill-Whittington v. Pfizer Inc.	McCaskill-Whittington, Marion	150386/07	Matthews & Associates; Napoli Bern Ripka, LLP
43	Dorothy McKinley v. Pfizer Inc.	McKinley, Dorothy	150170/07	Matthews & Associates; Napoli Bern Ripka, LLP
44	Roy Medlin v. Pfizer Inc.	Medlin, Roy	150380/07	Matthews & Associates; Napoli Bern Ripka, LLP

	<u>Case Caption</u>	<u>Plaintiff Name</u>	<u>Index No.</u>	<u>Plaintiff's Counsel</u>
45	Llyod Moore v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Moore, Llyod	150295/07	Matthews & Associates; Napoli Bern Ripka, LLP
46	Barbara O'Farrell v. Pfizer Inc.	O'Farrell, Barbara	150396/07	Weitz & Luxenberg, P.C.
47	David Ott v. Pfizer Inc.	Ott, David	150007/07	Weitz & Luxenberg, P.C.
48	Jane Outlar, Individually and as Representative for the Estate of David N. Outlar, Deceased v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co., and Monsanto Company	Outlar, David N.	150341/07	Napoli Bern Ripka, LLP; Watts Law Firm
49	Donald J. Paquin v. Pfizer Inc.	Paquin, Donald J.	150182/07	Matthews & Associates; Napoli Bern Ripka, LLP
50	Marcus B. Patterson v. Pfizer Inc.	Patterson, Marcus B.	150332/07	Matthews & Associates; Napoli Bern Ripka, LLP
51	Frank H. Alessio, et ux. Patricia A. Alessio, Lucy Pedone, and Vernon Ramoutar v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation	Pedone, Lucy	101549/05	Law Office of Ronald R. Benjamin
52	Barbara Jaros, Bruce D. Peer, et ux. Pamela K. Peer, Ronald Quackenbush, Sr., and Sharon Seymour Quackenbush v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Peer, Bruce D.	116110/04	Law Office of Ronald R. Benjamin

	<u>Case Caption</u>	<u>Plaintiff Name</u>	<u>Index No.</u>	<u>Plaintiff's Counsel</u>
53	Bobbie A. Pen v. Pfizer Inc.	Pen, Bobbie A.	150290/07	Matthews & Associates; Napoli Bern Ripka, LLP
54	Robert W. Phillips v. Pfizer Inc.	Phillips, Robert W.	150315/07	Matthews & Associates; Napoli Bern Ripka, LLP
55	Kevin Pitcher v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Pitcher, Kevin	111311/06	Law Office of Ronald R. Benjamin
56	Samuella D. Cadwell and Albert D. Cadwell, Wilbert E. Corprew, et ux, Carol Corprew, Elsa Plocek, et ux. Marian Plocek, and Ronald H. Schaffer, et ux. Beverly Schaffer v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Plocek, Elsa	106547/05	Law Office of Ronald R. Benjamin
57	Barbara Jaros, Bruce D. Peer, et ux. Pamela K. Peer, Ronald Quackenbush, Sr., and Sharon Seymour Quackenbush v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Quackenbush, Ronald, Sr.	116110/04	Law Office of Ronald R. Benjamin
58	Carolyn E. Rabb v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Rabb, Carolyn E.	150085/07	Matthews & Associates; Napoli Bern Ripka, LLP

	<u>Case Caption</u>	<u>Plaintiff Name</u>	<u>Index No.</u>	<u>Plaintiff's Counsel</u>
59	Marianne Raftis v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Raftis, Marianne	111297/06	Law Office of Ronald R. Benjamin
60	Maria H. Restrepo v. Pfizer Inc.	Restrepo, Maria H.	150197/07	Matthews & Associates; Napoli Bern Ripka, LLP
<i>deleted JM</i> 61	Lula Roberson v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Roberson, Lula	150393/07	Napoli Bern Ripka, LLP; Watts Law Firm
<i>deleted JM</i> 62	Maria Rozario, et ux. Cyril Rozario v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc. and Pharmacia and Upjohn Company, wholly-owned subsidiary of Pharmacia Corporation	Rozario, Maria	103934/06	Law Office of Ronald R. Benjamin
<i>deleted JM</i> 63	Maria Rozario and Cyril Rozario v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Rozario, Maria	150235/07	Napoli Bern Ripka, LLP
64	Khanom Salmassie v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Salmassie, Khanom	150394/07	Napoli Bern Ripka, LLP; Watts Law Firm
65	Dean Santacrose v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Santacrose, Dean	111290/06	Law Office of Ronald R. Benjamin

	<u>Case Caption</u>	<u>Plaintiff Name</u>	<u>Index No.</u>	<u>Plaintiff's Counsel</u>
66	Samuella D. Cadwell and Albert D. Cadwell, Wilbert E. Corprew, et ux, Carol Corprew, Elsa Plocek, et ux. Marian Plocek, and Ronald H. Schaffer, et ux. Beverly Schaffer v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Schaffer, Ronald H.	106547/05	Law Office of Ronald R. Benjamin
67	Ernest D. Schroeder v. Pfizer Inc.	Schroeder, Ernest D.	150372/07	Matthews & Associates; Napoli Bern Ripka, LLP
68	Ella Schulp, Individually and as Proposed Administrator of the Estate of Eugene Schulp, Deceased v. Pfizer Inc.	Schulp, Eugene	150406/07	Weitz & Luxenberg, P.C.
69	David D. Sellers v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Sellers, David D.	150087/07	Matthews & Associates; Napoli Bern Ripka, LLP
70	Kenneth E. Shaddix v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Shaddix, Kenneth E.	150088/07	Matthews & Associates; Napoli Bern Ripka, LLP
71	Betty C. Shagen v. Pfizer Inc.	Shagen, Betty C.	150319/07	Matthews & Associates; Napoli Bern Ripka, LLP
72	Sarah M. Shoulders v. Pfizer Inc.	Shoulders, Sarah M.	150207/07	Matthews & Associates; Napoli Bern Ripka, LLP

	<u>Case Caption</u>	<u>Plaintiff Name</u>	<u>Index No.</u>	<u>Plaintiff's Counsel</u>
73	Michael Smith, et ux Bonnie Lou Mitchell v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation	Smith, Michael	115440/05	Law Office of Ronald R. Benjamin
74	Johnny A. Sours v. Pfizer Inc.	Sours, Johnny A.	150403/07	Matthews & Associates; Napoli Bern Ripka, LLP
75	Lori Dufresne, Individually and as personal representative for Frank Spencer, deceased v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Spencer, Frank	402996/07	Law Office of Ronald R. Benjamin
76	Margaret Steinhoff, et ux. Michael Steinhoff v. Pfizer Inc., Pharmacia Corporation, a wholly-owned subsidiary of Pfizer Inc., and Pharmacia & Upjohn Company, a wholly-owned subsidiary of Pharmacia Corporation, and Merck & Co., Inc.	Steinhoff, Margaret	111292/06	Law Office of Ronald R. Benjamin
77	Keith H. Stender v. Pfizer Inc.	Stender, Keith H.	150223/07	Matthews & Associates; Napoli Bern Ripka, LLP
78	Susan N. Thaler v. Pfizer Inc.	Thaler, Susan N.	150225/07	Matthews & Associates; Napoli Bern Ripka, LLP
79	Jimmy E. Thompson v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Thompson, Jimmy E.	150301/07	Matthews & Associates; Napoli Bern Ripka, LLP

	<u>Case Caption</u>	<u>Plaintiff Name</u>	<u>Index No.</u>	<u>Plaintiff's Counsel</u>
80	Thelma Tomasco v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Tomasco, Thelma	150091/07	Matthews & Associates; Napoli Bern Ripka, LLP
81	Tamatha Tucker v. Pfizer Inc.	Tucker, Tamatha	116286/06	Weitz & Luxenberg, P.C.
82	Clifton B. Whitehead v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Whitehead, Clifton B.	150094/07	Matthews & Associates; Napoli Bern Ripka, LLP
83	John Wolfe and Thai Wolfe, w/h v. Pfizer Inc., Pharmacia Corp. f/k/a Pharmacia & Upjohn, Inc., G.D. Searle & Co. and Monsanto Company	Wolfe, John	150240/07	Napoli Bern Ripka, LLP; Watts Law Firm

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN RE: NEW YORK BEXTRA AND CELEBREX
PRODUCT LIABILITY LITIGATION

Index No. 762000/06

THIS DOCUMENT APPLIES TO:

LORI DUFRESNE, Individually and as personal representative for FRANK SPENCER, deceased,

Index No. 402996/07

Plaintiffs,

[PROPOSED] ORDER

V.

(COMPLIANCE MOTION
NO. 2)

PFIZER INC., PHARMACIA CORPORATION, a wholly-owned subsidiary of PFIZER INC., and PHARMACIA & UPJOHN COMPANY, a wholly-owned subsidiary of PHARMACIA CORPORATION, and MERCK & CO., INC.,

Defendants.

THIS MATTER having come before the Court on the Pfizer Defendants' Motion to Dismiss; the parties having received due notice and having had the opportunity to be heard; and this Court having considered all submissions made in support of and in opposition to the motion, finds as follows:

Plaintiffs have failed to comply with Case Management Order No. 6 (“CMO No. 6”) by failing to provide Pfizer Defendants with a completed Plaintiff Fact Sheet (“PFS”), correctly executed authorizations, and responsive documents within sixty (60) days after the filing of their case. Plaintiffs also have failed to comply with the Order issued by the Special Master, Judge Fern M. Smith (Ret.), on November 5, 2007, requiring Plaintiffs to provide the discovery required by CMO No. 6 within twenty-one (21) days of entry of that Order or face dismissal with

prejudice.

Based on these failures, the Court also finds as follows:

(1) The public's interest in expeditious resolution of this litigation is compromised by Plaintiffs' failure to comply with CMO No. 6 and the Special Master's Compliance Order. This Court and the public have an overriding interest in securing the just, speedy, and inexpensive determination of every action. Plaintiffs' failures are unreasonable and have impeded the resolution of these matters.

(2) The Court's need to manage its docket is compromised by Plaintiffs' failure to comply with CMO No. 6 and the Special Master's Compliance Order. The Court cannot effectively move forward with the cases in which plaintiffs have provided the required discovery when other plaintiffs have failed to do so. Dismissal of Plaintiffs' case will serve to appropriately penalize them for their non-compliance and also will encourage other plaintiffs to comply with this Court's Case Management Orders.

(3) Defendants are prejudiced by Plaintiffs' failure to comply with CMO No. 6 and the Special Master's Compliance Order. Without the discovery required by CMO No. 6, the Pfizer Defendants cannot defend themselves because they have no information about Plaintiffs or Plaintiffs' injuries outside the allegations in the Complaint. Pfizer Defendants are also prejudiced by the loss of evidence and memory that attend the delay in providing required discovery, factors that are aggravated by the complexity of this litigation.

(4) The public policy favoring disposition on the merits is overridden by Plaintiffs' failure to comply with CMO No. 6 and the Special Master's Compliance Order. The Court finds that Plaintiffs' failure to provide the required discovery obstructs resolution of their claims on the merits. A case that is stalled or unreasonably delayed by a party's failure to comply with deadlines and discovery obligations cannot move forward toward resolution on the merits.

(5) There are no less drastic sanctions available to force Plaintiffs to comply with this Court's Orders. The Court finds that CMO No. 6 and the Special Master's Compliance Order both provide specific warnings stating that claims may be dismissed with prejudice for failure to

comply with discovery obligations.

Accordingly, in light of this Court's role in overseeing this litigation, the Court hereby finds that dismissal of Plaintiffs' claims, with prejudice, is warranted.

THEREFORE, IT IS HEREBY ORDERED THAT the Pfizer Defendants' Motion to Dismiss is GRANTED and Plaintiffs' causes of action against Pfizer Defendants are DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Dated: March ___, 2008

Hon. Shirley W. Kornreich

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Luke K. Tamura, being duly sworn, deposes and says: I am over the age of 18 years old and not a party to this action. On the 8th day of February, 2008, I caused to be served true copies of the foregoing Pfizer Defendants' NOTICE OF MOTION TO DISMISS (COMPLIANCE MOTION NO. 2), AFFIRMATION OF CHRISTOPHER M. STRONGOSKY (COMPLIANCE MOTION NO. 2) and exhibit attached thereto, and [PROPOSED] ORDER (COMPLIANCE MOTION NO. 2) on the following counsel by U.S. mail:

Ronald R. Benjamin
LAW OFFICES OF RONALD R. BENJAMIN
126 Riverside Drive
P.O. Box 607
Binghamton, New York 13902-0607

Mitchell Breit
WHATLEY DRAKE & KALLAS LLC
1540 Broadway, 37th Floor
New York, New York 10036

David Rosenband
WEITZ & LUXENBERG, P.C.
180 Maiden Lane
New York, NY 10038

the addresses designated by said attorneys for that purpose. Service was completed by depositing true copies of same, enclosed in postpaid properly addressed wrappers, in an official depository under the exclusive care and custody of the United States Postal Service.



Luke K. Tamura

Sworn to before me this
8th day of February, 2008



Notary Public

TARSHA THOMPSON
Notary Public, State of New York
No. 01TH6058309
Qualified in Bronx County
Commission Expires May 7, 2011


AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Luke K. Tamura, being duly sworn, deposes and says: I am over the age of 18 years and not a party to this action. On the 11th day of February, 2008, I caused to be served a true copy of the foregoing Pfizer Defendants' NOTICE OF MOTION TO DISMISS (COMPLIANCE MOTION NO. 2), AFFIRMATION OF CHRISTOPHER M. STRONGOSKY (COMPLIANCE MOTION NO. 2) and exhibit attached thereto, and [PROPOSED] ORDER (COMPLIANCE MOTION NO. 2) on counsel by overnight delivery at the following address:

Vilia B. Hayes
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, NY 10004

the address designated by said attorney for that purpose. Service by overnight delivery was completed by depositing a true copy of same enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery.



Luke K. Tamura

Sworn to before me this
13th day of February, 2008


Notary Public

JEROME McCAIN
Notary Public, State of New York
No. 01MC5050517
Qualified in Bronx County
Certificate Filed in New York County
Commission Expires December 11, 2009

02/29/2008 19:44

212-403-5663

DLA PIPER US LLP

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN RE: NEW YORK BEXTRA AND CELEBREX
PRODUCT LIABILITY LITIGATION

LORI DUFRESNE, Individually and as personal
representative for FRANK SPENCER, deceased,

Plaintiffs,

-against-

PFIZER INC., PHARMACIA CORPORATION, a wholly-
owned subsidiary of PFIZER INC., and PHARMACIA &
UPJOHN COMPANY, a wholly-owned subsidiary of
PHARMACIA CORPORATION, and MERCK & CO.,
INC.,

Defendants.

Index No. 762000/06

Index No. 402996/07

STIPULATION
DISMISSAL WITH
PREJUDICE AGAINST
PFIZER DEFENDANTS

APR 09 2008

COUNTY CLERK'S OFFICE
NEW YORK

IT IS HEREBY STIPULATED AND AGREED, by and between the parties to the above-entitled action through their respective attorneys, that whereas no party hereto is an infant, incompetent person for whom a committee has been appointed or conservatee and no person not a party has an interest in the subject matter of this action, all claims asserted against Pfizer Inc., Pharmacia Corporation, and Pharmacia & Upjohn Company ("Pfizer Defendants") in the Complaint in the above-entitled action are dismissed with prejudice and without costs to any of the parties as against the other. This Stipulation may be filed without further notice with the

COURTESY COPY
Original E-filed as
Document # 10

02/29/2008 19:44 212-403-5553

DLA PIPER US LLP

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Clerk of the Court. A facsimile copy of this Stipulation shall have the same effect as the original.

Dated: New York, New York
March 5, 2008

LAW OFFICE OF RONALD R. BENJAMIN

By: Ronald R. Benjamin

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Attorneys for Merck & Co., Inc.

03/04/2008 17 21 FAX

HH&R LLP 11W

03/03/2008 11:33 212-403-5663

DLA PIPER US LLP

006/028

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Clerk of the Court. A facsimile copy of this Stipulation shall have the same effect as the original.

Dated: New York, New York
March 4, 2008

LAW OFFICE OF RONALD R. BENJAMIN

DLA PIPER US LLP

By: _____
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02/29/2008 19:44 212-403-5663

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN RE: NEW YORK BEXTRA AND CELEBREX
PRODUCT LIABILITY LITIGATION

Index No. 762000/06

LORI DUFRESNE, Individually and as personal
representative for FRANK SPENCER, deceased,

Index No. 402990/002678

ELECTRONIC FILING
Plaintiffs,

FILED
MAR 06 2008

-against-

PFIZER INC., PHARMACIA CORPORATION, a wholly-
owned subsidiary of PFIZER INC., and PHARMACIA &
UPJOHN COMPANY, a wholly-owned subsidiary of
PHARMACIA CORPORATION, and MERCK & CO.,
INC.,

STIPULATION OF
DISMISSAL WITH
PREJUDICE AGAINST
PFIZER DEFENDANTS

Defendants.

IT IS HEREBY STIPULATED AND AGREED, by and between the parties to the above-entitled action through their respective attorneys, that whereas no party hereto is an infant, incompetent person for whom a committee has been appointed or conservatee and no person not a party has an interest in the subject matter of this action, all claims asserted against Pfizer Inc., Pharmacia Corporation, and Pharmacia & Upjohn Company ("Pfizer Defendants") in the Complaint in the above-entitled action are dismissed with prejudice and without costs to any of the parties as against the other. This Stipulation may be filed without further notice with the

4/29/2008 19:44 212-483-5663

DLA PIPER US LLP

PAGE 24/48

Clerk of the Court. A facsimile copy of this Stipulation shall have the same effect as the original.

Dated: New York, New York
March 5, 2008

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DLA PIPER US LLP

008/028
PAGE 87/31

Clerk of the Court. A facsimile copy of this Stipulation shall have the same effect as the original.

Dated: New York, New York
March 4, 2008

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **HON. SHIRLEY WERNER KORNREICH**

PART 54

Justice

Index Number : 402996/2007

DUFRESNE, LORI

VS.

PFIZER

SEQUENCE NUMBER : # 001

DISMISS

INDEX NO. 402996-07

MOTION DATE

MOTION SEQ. NO. #001

MOTION CAL. NO.

read on this motion to/for

PAPERS NUMBERED

E-FILED DEPT.

APR 11 2008

NYS SUPREME COURT
REVIEWED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits

Replying Affidavits

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion is withdrawn.

FILED

APR 09 2008

RECEIVED

APR 09 2008

IAS MOTION
SUPPORT OFFICE

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/7/08

HON. SHIRLEY WERNER KORNREICH

J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

MIAE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):